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OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW,

ASSISTED BY
HENRY JOHNSTON,
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TO
THE HONOURABLE
SIR ROLAND VAUGHAN WILLIAMS, K^T,
ONE OF THE JUSTICES OF HER MAJESTY'S HIGH COURT OF JUSTICE
AND
THE FIRST JUDGE OF THAT COURT TO WHOM THE
EXERCISE OF THE JURISDICTION UNDER
THE COMPANIES WINDING-UP ACT, 1890, HAS BEEN ASSIGNED,
THE FIFTH EDITION
OF
THIS WORK
IS, BY HIS LORDSHIP'S PERMISSION,
Respectfully Inscribed
BY THE EDITOR.

PREFACE TO THE FIFTH EDITION.

THE arrangement of former editions has been somewhat modified in the present, to admit the inclusion in the body of the book of the annotated text of the Companies Winding-up Act, and Rules which formed the principal part of the now discontinued Annual Winding-up Practice. The alteration, while reducing the bulk of the book, has permitted the introduction of chapters on matters which, although not strictly part of the subject of winding-up, are very nearly akin to it.

The book is now divided into six parts.

Part I. treats of matters common to all forms of winding-up, whether by the Court or voluntary.

Part II. of winding-up by the Court, and consists of the Winding-up Act and Rules annotated.

Part III. of voluntary winding-up, and winding-up continued under supervision.

Part IV. of reconstruction, amalgamation, and arrangements.

Part V. of alterations of the Memorandum of Association, including reduction of capital, and the practice under the Memorandum of Association Act, 1890.

Part VI. of remedies of debenture-holders, and the duties and liabilities of receivers and managers.

Forms and statutes are contained in the Appendices.

The editor is responsible for carrying out the arrangement of the present edition, and for Parts V. and VI., which

are new. Part IV. has been amplified, and additional forms in connection with its subject-matter have been inserted.

The editor desires to express his thanks to Mr. Henry Johnston, of the Middle Temple, for his valuable co-operation in the whole work; to Mr. John Lithiby, of the Middle Temple, for much useful assistance; and to Mr. Thomas Barnes, of the Companies Winding-up Office, for kindly revising the forms, and for many suggestions with regard to them.

D. S.

3, NEW SQUARE, LINCOLN'S INN,
February, 1896.

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THE PRACTICE

IN

WINDING-UP COMPANIES.

CHAPTER I.

PRELIMINARY.

Modes of winding-up.—A company registered under the Act of 1862, or under the former Acts of 1856-1858, may now be wound up in any of the following ways :—

Chap. I.

PRELIMINARY.

(1.) Compulsorily, or by the Court ;

(2.) Voluntarily, without the intervention of the Court ;

(3.) Voluntarily, but under an order and subject to the supervision of the Court.

Unregistered companies cannot be wound up voluntarily, or under the supervision of the Court.

Difference between the three modes.—The Companies Winding-up Act, 1890, and the rules made under it form a complete code, which now regulates the winding-up of companies by the Court, when the registered office of the company is in England or Wales. The work is done under the direct superintendence of the Registrar and his staff, the Official Receiver, and the Board of Trade. The liquidator is an officer of the Court, and if the company be insolvent, is a trustee only for the creditors.

In **voluntary** winding-up the proceedings are still taken under the Act of 1862, and the general orders made under it.

Those sections only of the Winding-up Act, 1890, which are expressed to apply to voluntary winding-up do so apply. The principal sections applicable are s. 3, dealing

Chap. I.**PRELIMINARY.**

with the transfer of proceedings from one Court to another; s. 10, enabling the Court to assess damages against delinquent directors, officers, and promoters; and s. 14, which gives the official receivers attached to the Court having jurisdiction power to apply for a compulsory order where a winding-up is proceeding voluntarily or under supervision. In voluntary winding-up the business is done by the liquidator who is a trustee for the company, and winding-up does not necessarily imply insolvency.

In voluntary winding-up continued under **supervision**, the Court generally includes in the supervision order a direction that the liquidator shall in each month file with the Registrar a report in writing as to the position of and the progress made with the winding-up, and that no costs or remuneration of the liquidator or any solicitor employed by him or any other person be paid out of the assets of the company unless taxed or allowed by the Registrar.

By r. 74 of the general orders of 1862, the general practice of the Chancery Division is to apply to all proceedings in winding-up companies under the Act of 1862, where special provision is not otherwise made by the Act or rules.

It is proposed in the following pages to divide the subject of winding-up into three parts:—

Part I. Treating of matters common to all methods of winding-up.

Part II. Treating of winding-up by the Court; the Winding-up Act of 1890, and the rules under it annotated, forming a complete code of practice.

Part III. Treating of winding-up voluntarily, and under the supervision of the Court.

The text of the relevant statutes and rules (other than the Winding-up Act, 1890, and the rules under it), and the forms applicable to the different methods of winding-up, are contained in the appendix.

PART I.

MATTERS COMMON TO ALL METHODS OF
WINDING-UP.

CHAPTER II.

WHAT COMPANIES MAY BE WOUND UP.

Registered companies under the Act.	Industrial, &c., societies.
Registered companies under Joint Stock Acts.	Building societies.
Unregistered companies, associations, &c.	Life assurance companies.
Companies incorporated by special Act.	Trades Union societies.
Company dissolved or transferred.	Foreign companies.
	Mining companies within the Stan-
	naries.
	Savings Banks.

Registered companies under the Act.—All companies (with the exceptions and subject to the regulations mentioned in ss. 179, 182, 188, and 196) registered under the Act, whether formed under it or not, may be wound up (*a*). Registration, however, after the presentation of a winding-up petition, is a nullity (*b*). But no registration is invalid by reason that it has taken place with a view to the company being wound up (*c*).

Chap. II.

 WHAT
COM-
PANIES
MAY BE
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A company, incorporated by registration under the Companies Acts, upon which powers for the public benefit have been conferred by a provisional order of the Board of Trade, can be wound up though it may not be possible to sell the undertaking and property of the company without the authority of an Act of Parliament (*d*).

A winding-up order is not a judgment *in rem*; and, if made improperly, is not binding in strangers (*e*).

Registered companies under Joint Stock Acts.—With certain exceptions and qualifications, the Act is made applicable to companies formed and registered, or registered

(*a*) See ss. 180, 196.

(*b*) *Hercules Ins. Co.*, 11 Eq. 321.

(*c*) S. 180, a company formed for the purpose only of being registered in order to be wound up will be refused registration under this section. *Ex p. Johnston* [1891] 2 Q. B. 598.

(*d*) *Barton-upon-Humber and District Water Co.*, 42 Ch. D. 585; and see *Borough of Portsmouth etc. Tramways Co.* [1892] 2 Ch. 362 and *Marshall v. South Staffordshire Tramways Co.* [1895] 2 Ch. 36.

(*e*) *Re Bowling and Welby's Contract* [1895] 1 Ch. 663.

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only, under "The Joint Stock Companies Act, 1856, and 1856-1857," "The Joint Stock Banking Companies Act, 1857," "The Act to enable Joint Stock Banking Companies to be formed on the principle of limited liability" (a), in the same manner in the case of a limited company as if it had been formed and registered under the Act as a share limited company, and in the case of a company other than a limited company, as if it had been formed and registered under the Act as an unlimited company (b). And a company formed and registered under the former Joint Stock Companies Acts may be wound up without being required to re-register under the present Act, although doubts have been raised on the subject (c).

Unregistered companies, associations, &c.—Unregistered partnerships, associations, or companies (that is to say, not registered at the date of the commencement of the winding-up (d), consisting of more than seven members at the date of the petition (e), may be wound up under the provisions of the Act, but not voluntarily or subject to the supervision of the Court (f). The word "members" in s. 199 does not necessarily mean "shareholders" (g). Representatives of deceased members, trustees of bankrupt members, and past members, although liable to contribute to the debts of the company, are not members within the meaning of the section (h). The Court has jurisdiction, under s. 199, to wind up an unregistered joint stock foreign company, with a branch office, and assets and liabilities in England (i). So, again, a company incorporated by

(a) 19 & 20 Vict. c. 47; 20 & 21 Vict. c. 14; 20 & 21 Vict. c. 49; 21 & 22 Vict. c. 91; 7 & 8 Vict. c. 110.

(b) See ss. 175 to 178.

(c) *London India Rubber Co.*, 1 Ch. 329. See also *Torquay Bath Co.*, 32 Beav. 581, a company registered under Act of 1856; *Bowes v. Hope Ins. Soc.*, 11 H. L. C. 389; a company registered under 7 & 8 Vict. c. 110; *Bank of London Ins. Ass.*, 6 Ch. 421, as to a company registered under the Joint Stock Acts not being an unregistered company within s. 199.

(d) See *Hercules Ins. Co.*, *supra*.

(e) *Bolton Benefit Loan Soc.*, 12 Ch. D. 679; *re Bowling and Welby's Contract*, [1895], 1 Ch. 663. Although there were formerly more

than seven, if there are less at the date of the petition, no order will be made.

(f) S. 199. See this section as to the meaning of "the Court" in the case of an unregistered company. As to discretion of Court to refuse an order, see *Second Commercial Building Soc.*, 40 L. J. Ch. 753. See *Rivlin v. Great Britain Assee. Soc.*, 17 Ch. D. 600.

(g) *South London Fish Market Co.*, 39 Ch. D. 324; in Court below, 59 L. T. 210.

(h) *Re Bowling and Welby's Contract*, *supra*.

(i) *Matheson Bros.*, 27 Ch. D. 225; and cases, *post*, p. 17. See *Smyth v. Sibley Flour Mills Co.*, 14 C. of S. Cas. 441, Sc.

royal charter granted under the powers conferred on the Crown by 7 Will. 4 & 1 Vict. c. 73, s. 29 (a). But s. 199 is only applicable to trading associations, inasmuch as such unregistered companies are to be wound up at their "place of business," and "business" must ordinarily be trading under the Act (b).

Where proceedings are pending for winding-up an unregistered company, all the provisions of Part IV. of the Act of 1862, other than those expressly excepted, are applicable (c).

Railway companies incorporated by Act of Parliament are, however, excepted, that is to say, where the chief object is the construction of a railway (d); but a dock company empowered to make a small branch railway would not come within the terms of this exception (e); nor a ferry company (f); nor a tramway company (g). But railway companies can be wound up under the Act if they are duly authorized to abandon their railways (h). And to get rid of s. 199 of the Act, which expressly excepts railway companies from its provisions, a special Act relating to the company may be obtained dispensing with the exception, and enacting that the railway company shall be deemed to be a registered company and subject to the provisions of the Companies Act (i).

It has been considered doubtful whether a railway

(a) *Oriental Bank Corp., Ex. p. Clayton & Hartas*, 54 L. J. Ch. 481.

(b) *Bristol Athenæum*, 43 Ch. D. 236. See 53 & 54 Vict. c. 63, s. 32 (3).

(c) *Rudow v. Great Britain Assee. Soc., supra.*

(d) As to definition of the word "railway," see Railway Companies Securities Act, 1866, s. 2; Regulation of Railways Act, 1868; Regulation of Railways Act, 1871, s. 2; Railway and Canal Traffic Act, 1854, s. 1; Railway and Canal Traffic Act, 1873, s. 3; Railway and Canal Traffic Act, 1888; *Doughty v. Firbank*, 10 Q. B. D. 358; *Great Northern Ry. Co. v. Tahourdin*, 13 Q. B. D. 320.

(e) *Exmouth Docks Co.*, 17 Eq. 181; *Isle of Wight Ferry Co.*, 2 H. & M. 597; see *Ward v. Sittingbourne Ry. Co.*, 9 Ch. 488, as to the jurisdiction of the Court to

entertain an action for winding-up a railway company, and cf. *Great Northern Ry. Co. v. Tahourdin, supra.*

(f) *Isle of Wight Ferry Co.*, 2 H. & M. 597.

(g) *Brentford, &c., Tramways Co.*, 26 Ch. D. 527; *Borough of Portsmouth, &c., Tramways Co.*, [1892], 2 Ch. 362.

(h) *Skipton v. Wharfedale Ry. Co.*, 20 L. T. 359. See *Uxbridge, &c., Ry. Co.*, 43 Ch. D. 536, as to proceedings under an Abandonment Act being equivalent to a winding-up; and 30 & 31 Vict. c. 127, s. 31; 32 & 33 Vict. c. 114, s. 4. Before the Act, see *North Kent Extension Ry. Co.*, 8 Eq. 356.

(i) See such a case, *Ruthin, &c., Ry. Co.*, *Times*, 28 July, 1884. See *Ward v. Sittingbourne Ry. Co.*, 9 Ch. 488.

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company incorporated by a special Act can be registered, and wound up, under the Act of 1862 (*a*). The joint effect of s. 179 (1), and of ss. 180 and 181, seems to be that railway companies incorporated by Act of Parliament, and having a capital divided into shares or a transferable stock, may be registered under the Act, although this was probably not intended (*a*). And in an Irish case, it has been held that a railway company may be registered, and wound up, under the Act of 1862 (*b*).

It seems that a very wide meaning would now be given to the term "association" where there are more than seven persons, but the consideration of each case resolves itself into a question of evidence (*c*). Four firms containing more than seven, but less than twenty members associated in a trading adventure were held to be within the meaning (*d*). So where a subscription was made between more than seven members for the purpose of purchasing some property, which it was intended to sell at a profit to a company to be formed, it was held that a partnership had been constituted which could be wound up (*e*). Where the members of a company, being freemen of a manor paying a certain sum for admission as members to the funds of the company, had from time immemorial, and by charters dating from the time of Henry II., and under an Act of Parliament passed in 1840, an exclusive right to breed, lay, and dredge for oysters on the ground of the manor, subject to a yearly payment to the lord of the manor, it was held, on petition to wind up the company by a creditor, supported by a majority of the creditors, that a winding-up order could not be made (*f*). But the decision of the Court of Appeal was based on the fact that the franchise could not be sold. A trust cannot be wound up; and an association which is trustee cannot be wound up (*g*).

But the mere fact that expenses have been incurred with the object of forming a company which proves to be abortive will not make it an unregistered company which can be

(*a*) Lindley (5th ed.) 116, 618. See also s. 196.

(*b*) *Ennis, &c., Ry. Co.*, 3 L. R. Ir. 94.

(*c*) *Ex p. Hargrove & Co.*, 10 Ch. 542. See *Bank of London, &c., Ins. Assoc.*, 6 Ch. 421 at p. 425. See *St. James' Club Case*, 2 De G. M. & G. 883.

(*d*) *Adanson Fibre Co.*, 9 Ch. 637, n. See *South of France, &c.,*

Syndicate, 36 L. T. 651, as to the admission of insolvency by more than seven members.

(*e*) *Royal Victoria Theatre Syndicate*, 30 L. T. 3.

(*f*) *The Company or Fraternity of Free Fishermen of the Manor of Faversham*, 36 Ch. D. 329; reversing 56 L. T. 422.

(*g*) *Ibid.*

wound up (a). It is doubtful whether provisional directors can, by acting in the name of the company, become so associated as to form a body capable of being wound up (b). But an unregistered land society consisting of more than twenty members, which is not carrying on a business, having for its object the acquisition of gain within the meaning of s. 4 of the Act of 1862, may be wound up (c).

Municipal corporations, ecclesiastical corporations aggregate, literary, scientific (d), or **charitable societies**, are not, it seems, associations to which the provisions of this section apply; and it has been held that an ordinary club cannot be wound up (e), that is to say, a club not registered under the Act (f).

There is no decision under the present Act as to an unregistered loan society, but such a society was held to be within the Winding-up Act, 1849, and, probably, would now be wound up (g).

A savings bank company is not necessarily a banking company within the Companies Act (h).

Orders have been made in the case of scrip companies under the old Acts, and it seems that they would also, if lawfully formed, be wound up under the present Act (i).

Orders have formerly been made in the case of unregistered mutual societies (k), but the non-registration of a mutual society which should now be registered (l) makes it illegal, and the Court has no jurisdiction under these circumstances to make an order (m). There seems to be

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(a) *Imperial Anglo-German Bk.*, 26 L. T. 229.

(b) *Imperial Anglo-German Bk.*, *supra*. And see *Royal Victoria Theatre, &c.*, *supra*.

(c) *Belle Vue Freehold Land Soc.*, 26 Sol. J. 671. See *Wigfield v. Potter*, 45 L. T. 612.

(d) *Bristol Athenaeum*, *supra*.

(e) *St. James' Club Case*, *supra*; *Richardson v. Hastings*, 7 Beav. 323; 11 Beav. 17.

(f) See ss. 6 and 23 of the Act of 1867.

(g) *Ex p. Smith*, 1 Sim. N.S. 165. See *Bolton Benefit Loan Soc.*, 12 Ch. D. 679; *Ex p. Poppleton*, *Re Thomas*, 14 Q. B. D. 379.

(h) *Re District Savings Bank*, 31 L. J. B. 8. See s. 4 of the Act of 1862, and *post*, p. 20, as to Trustee Savings Banks.

(i) *Barclay's Case*, 26 Beav. 177. *Ex p. Grisewood*, 4 De G. & J. 544. But see *Princess of Reuss v. Bos*, L. R., 5 H. L. 176.

(k) *Shields Marine Ass.*, 5 Eq. 368; *London Marine Ass.*, 8 Eq. 176, 185; *Albert Average Ass.*, 5 Ch. 597; *Ex p. Phillips*, 3 De G. & S. 3; *Arthur Average Assoc.*, 3 Ch. D. 522. See *Merchants' Ass. Soc.*, 9 Eq. 694. But as to Life Assurance companies see *Great Britain, &c., Soc.*, 16 Ch. D. 246, *post*, p. 16.

(l) See s. 4, as to not more than twenty members, and *Sykes v. Beadon*, 11 Ch. D. 170; *Smith v. Anderson*, 15 Ch. D. 247; *Jennings v. Hammond*, 9 Q. B. D. 225; *Ex p. Poppleton*, *supra*, *Re Siddall*, 29 Ch. D. 1.

(m) *Padstow Total Loss Ass.*, 20 Ch. D. 137. See *Shaw v. Benson*,

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no reason why an illegal company should not be wound up at the instance of *bona fide* creditors, but it cannot be wound up at the instance of its own members who are *participes criminis* (a). Possibly in some cases, however, a winding-up order might even be made at the instance of a contributory who was not cognizant of the illegality, upon the ground that the very fact of the illegality cannot be alleged by the company as a defence (b).

Orders have been made where one of the subscribers was an infant (c); but no order can be made where the memorandum is signed by less than seven persons (d).

Companies incorporated by special Act. — The provisions as to unregistered companies have been held to apply to companies incorporated by special Act of Parliament, and winding-up orders have been made on the petition of the company itself (e); and of a contributory (f); and also in the case of a ferry company (g), a telegraph company (h), a canal company (i), and a tramway company (l) of this description. Where the special Act imposed upon the eight persons incorporated thereby the statutory obligation of continuing directors and members of the company, it was held that the Court had jurisdiction to make an order (l).

The necessity of an application to Parliament to effect a sale of property is not a bar to an order (m). But if works

11 Q. B. D. 563; *Shaw v. Simmons*, 12 Q. B. D. 117; *Crowther v. Thorley*, 50 L. T. 43; *Re Siddall*, 29 Ch. D. 1; *Ex p. Poppleton*, *supra*; *per M.R. in Ex p. Hargrave & Co.*, 10 Ch. 542, 548; and *S. Wales Atlantic Steamship Co.*, 2 Ch. D. 763. See under the old Acts, *Barclay's Case*, 26 Beav. 177; *Waterloo Life Ins. Co.*, 31 Beav. 586; *Ex p. Longworth*, 1 De G. F. & J. 17.

(a) See cases in last note, *cf. Doolan v. Midland Ry. Co.*, 2 App. Cas. 792, 806; *South Wales Atlantic Steamship Co.*, *supra*.

(b) Consider *Padstow Total Loss Ass.*, *supra*, and cases cited above.

(c) *Hertfordshire Brewery Co.*, 43 L. J. Ch. 358; *Nassau Phosphate Co.*, 2 Ch. D. 610; *Re Laxon & Co.* [1892], 3 Ch. 555.

(d) *National Debenture, &c., Corp.* [1891], 2 Ch. 505. See

Glover v. Giles, 18 Ch. D. 173; *Hill v. Hill*, 55 L. T. 763.

(e) *Bradford Navigation Co.*, 10 Eq. 331; 5 Ch. 600.

(f) *Re South Staffordshire Tramways Co.*, 8 R. 288.

(g) *Ish of Wight Ferry Co.*, 2 H. & M. 597.

(h) *Electric Telegraph Co. of Ireland*, 22 Beav. 471.

(i) *Basingstoke Canal Co.*, 14 W. R. 956; *Wey Canal Co.*, 4 Eq. 197.

(k) *Brentford, &c., Tramways Co.*, 26 Ch. D. 527. *Borough of Portsmouth, &c., Tramways Co.*, *re* [1892], 2 Ch. 362.

(l) *South London Fish Market Co.*, 39 Ch. D. 324, and in Court below, 59 L. T. 210.

(m) *Bradford Navigation Co.*, *supra*. And see cited, *ante*, p. 5; *Barton-upon-Humber and District Water Co.*, 42 Ch. D. 585; where

are declared by the special Act to be of public advantage the Court will only make an order as a last resource (*a*). The question whether a railway company incorporated by a special Act can be registered, and wound up, under the Act of 1862 has just been referred to (*b*).

Company dissolved or transferred.—If a company has been voluntarily wound up and dissolved, the Court has no jurisdiction to make an order unless the dissolution can be impeached on the ground of fraud (*c*). But the Court has jurisdiction to make an order in the matter of the voluntary winding-up, if the petition is presented before the three months have expired (*d*), and after the expiration of such time, if the application has been made before the three months have elapsed (*e*). Although an unregistered company had been dissolved, and its assets and liabilities transferred to another company, before the passing of the present Act, a winding-up order was made on the petition of a creditor, whose debt, incurred before the dissolution, was unsatisfied, on the ground that it was carrying on business for the purpose of winding up its affairs within s. 199 (3) (*f*). A company which had sold its business out and out, and had taken as the consideration shares in the buying company was wound up (*g*).

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Industrial, &c., societies.—The Industrial and Provident Societies Act, 1893 (*h*), provides that a society registered under that Act may be dissolved:

(*a*.) By an order to wind up the society, or a resolution for the winding-up thereof, made as is directed in regard to companies by the Companies Acts, 1862 to 1890, the

Blaker v. Herts Waterworks Co., 41 Ch. D. 399, is distinguished. *Borough of Portsmouth, &c., Tramways Co.*, *supra*.

(*a*) *Exmouth Docks Co.*, 17 Eq. 181, 190; *The Company or Fraternity of Free Fishermen of Faversham*, 36 Ch. D. 329; in Court below, 56 L. T. 422. See *Herne Bay Waterworks Co.*, 10 Ch. D. 42.

(*b*) See *supra*, p. 7.

(*c*) *London and Caledonian Ins. Co.*, 11 Ch. D. 140; *Pinto Mining Co.*, 8 Ch. D. 273; *Westbourne Grove Drapery Co.*, 27 W. R. 37. See *Alfreton, &c., Soc.*, 7 L. T. 817. *Coxon v. Gorst* [1891], 2 Ch. 73.

(*d*) See s. 143. See Part III. Chap. I. p. 417.

(*e*) *Crookhaven Mining Co.*, 3 Eq. 69.

(*f*) *Family Endowment Soc.*, 5 Ch. 118. See *Ex p. Phillips*, 3 De G. & S. 3; *Ex p. Dee*, *ib.* 112; *Warwick, &c., Ry. Co.*, 13 Jur. 751.

(*g*) *Edison Telephone Co.*, 25 Sol. J. 240.

(*h*) 56 & 57 Vict. c. 39, s. 58. As to Friendly Societies, see 38 & 39 Vict. c. 60, s. 25. As to Trades Unions, see 34 & 35 Vict. c. 31, s. 5. As to Friendly Societies registering under the Companies Act, 1862, see *Peat v. Fowler*, 34 W. R. 366.

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provisions whereof shall apply to any such order or resolution, except that the term registrar shall for the purpose of such winding-up have the meaning given to it by that Act.

(b.) By the consent of three-fourths of the members, testified by their signatures to an instrument of dissolution.

By s. 59 any proceedings for winding up a registered society, which at the passing of the Act were pending in any County Court, may on application by or on behalf of the registrar, with the consent of the Treasury, be transferred to the High Court, whereupon the Companies (Winding-up) Act of 1890 shall apply (a).

Where a society is terminated by an instrument of dissolution the following provisions are to apply (b) :—

- (a.) The instrument of dissolution shall set forth the liabilities and assets of the society in detail, the number of members and the nature of their interests in the society respectively, the claims of creditors (if any), and the provisions to be made for their payment, and the intended appropriation or division of the funds and property of the society, unless the same be stated in the instrument of dissolution to be left to the award of the chief registrar :
- (b.) Alterations in the instrument of dissolution may be made with the like consents as hereinbefore provided, and testified in the same manner :
- (c.) A statutory declaration shall be made by three members and the secretary of the society that the provisions of this Act have been complied with, and shall be sent to the registrar with the instrument of dissolution ; and any person knowingly making a false or fraudulent declaration in the matter shall be guilty of a misdemeanour :
- (d.) The instrument of dissolution and all alterations therein shall be registered in the manner herein provided for the registry of rules, and shall be binding upon all the members of the society :
- (e.) The registrar shall cause a notice of the dissolution to be advertised at the expense of the society in the *Gazette*, and in some newspaper circulating in or about the locality in which the registered office of the society is situated ; and unless within three months from the date of the *Gazette* in which such advertisement appears, a member or other person interested in or having any claim on the funds of the society commences proceedings to set aside the dissolution of the society in the County Court of the district where the registered office of the society is situate, and such dissolution is set aside accordingly, the society

(a) The enactments from time to time in force for winding up companies in the High Court apply to the winding-up of an Industrial Society pending in a County Court,

and not transferred under this section, *re Periodical Industrial Co-operative Society* [1894], 1 Q. B. 828.

(b) 36 & 37 Vict. c. 39, s. 61.

shall be legally dissolved from the date of such advertisement, and the requisite consents to the instrument of dissolution shall be considered to have been duly obtained without proof of the signatures thereto :

- (f.) Notice shall be sent to the central office of any proceeding to set aside the dissolution of a society not less than seven days before it is commenced, by the person by whom it is taken, or of any order setting it aside, within seven days after it is made by the society.

A form of instrument of dissolution will be found at p. 582.

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Building Societies.—Building Societies, which remain unincorporated and under the old Statutes, are treated, for the purposes of winding-up, as unregistered companies with unlimited liability, and as subject to the provisions of s. 199 of the Companies Act of 1862 (a). The winding-up of building societies, having a legal existence only by the Act of 1836, must be carried out compulsorily under the above section of the Companies Act of 1862 (b). This section only applies in cases where there are more than seven members, for the Court will not put the expensive machinery of the winding-up Acts in force when the number of shareholders is small (c). Even where there were nine shareholders, the Court refused to interfere (d). Where, however, it appeared that the society only consisted of five members at the date of the petition, though there were formerly many more than seven members, Romilly, M.R., held that there was jurisdiction to order the society to be wound up (e). But in another similar case, the petition was ordered to stand over, in order to allow an action to be commenced for dissolution of partnership, and a winding-up order was refused by Jessel, M.R. (f). The Court may, in its discretion, refuse to make an order notwithstanding that there is no other way in

(a) S. 199, *London and Metropolitan Counties, &c., Investment Soc.*, W. N., 1889, p. 18. As to the effect of an unincorporated society becoming incorporated after a petition is dismissed and notice of appeal, and as to the Court of Appeal then having no jurisdiction, see *Old Swan and West Derby Bldg. Soc.*, *Ex p. Evans*, 57 L. T. 381.

(b) *Midland Counties Bldg. Soc.*, 4 De G. J. & S. 468; *St. George's Bldg. Soc.*, 4 Drew. 154; *Doncaster Bldg. Soc.*, 3 Eq. 158; *Queen's Building Soc.*, 6 Ch. 815;

Professional, &c., Bldg. Soc., *ib.*, 856; *Cilfaden Bldg. Soc.*, 3 Ch. 462.

(c) *Sea and River Marine Ins. Co.*, 2 Eq. 545; *Strand Hotel Co.*, 10 Sol. Jo. 807.

(d) *Natal, &c., Co.*, 1 H. & M. 639.

(e) *National Permanent Bldg. Soc.* (2) W. N. 1867, p. 225. See also *Sanderson's Patent Assoc.*, 12 Eq. 188; *Lacey & Co.*, 49 L. J. Ch. 660.

(f) *Bolton Benefit Loan Soc.*, 12 Ch. D. 679.

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which such a company can be wound up under the Companies Acts (a).

Under the Building Societies Act, 1874 (b), four methods are provided in which a society may terminate or be dissolved:—

- (i.) Upon the happening of any event declared by its rules to be the determination of the society;
- (ii.) By dissolution in manner prescribed by its rules;
- (iii.) By dissolution with the consent of three-fourths of the members (c), holding not less than two-thirds of the shares;
- (iv.) By winding up, either—

(a.) Voluntarily under the supervision of the Court (d), or,

(b.) By the Court, if it shall so order, on the petition of any member authorized by three-fourths of the members present at a general meeting specially called for the purpose; or on the petition of any judgment creditor for not less than £50, but not otherwise.

By the Building Societies Act, 1894 (e), a fifth method is introduced, for by s. 7 it is provided that on the application in writing of one-tenth of the members, or of a hundred members if the society consists of over one thousand, setting forth that the society is unable to meet the claims of its members, and that it would be for their benefit that it should be dissolved, and requesting an investigation into the affairs of the society with a view to dissolution, the registrar may investigate the affairs of the society, and if it appears that the society is unable to meet the claims of its members, and that it would be for their benefit that the society should be dissolved, the registrar may in his discretion direct a dissolution of the society, and the mode in which its affairs are to be wound up. Notice of such dissolution is to be advertised in the manner directed by the Act within twenty-one days of the award for dissolution (f).

(a) *Second Commercial Benefit Bldg. Soc.*, 48 L. J. Ch. 753. See *London and Metropolitan Counties, &c., Investment Soc.*, W. N. 1882, p. 18.

(b) 37 & 38 Vict. c. 42, ss. 4 & 32.

(c) Members who had given notice of withdrawal, but had not received their money, were held to

be still members for the purpose of ascertaining the statutory majority; see *Sibson v. Pears*, 44 Ch. D. 354.

(d) *Sunderland 32nd Universal B. S.*, 21 Q. B. D. 349.

(e) 57 & 58 Vict. c. 47.

(f) By s. 6 of the same Act provision is made in certain contingencies for the cancellation and suspension

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The instrument of dissolution under (ii.) and (iii.), and all alterations therein, must be registered, and are binding upon all the members. It is to set forth,—

- (a.) The liabilities and assets in detail;
- (b.) The number of members, and the amount to their credit in the books;
- (c.) The claims of depositors and other creditors, and provision for their payment;
- (d.) The intended appropriation or division of the society's funds and property;
- (e.) The names of one or more persons to be appointed trustees for the special purpose, and their remuneration (a).

Notice of the commencement and termination of every dissolution or winding-up is to be sent to the registrar.

Prior to the Building Societies Act, 1894, the jurisdiction to wind up was vested in the County Court exclusively (b). Sec. 8 of that Act provides that notwithstanding anything in the Building Societies Acts, every society under those Acts shall be deemed to be a company within the meaning of the Companies (Winding-up) Act, 1890; and proceedings in the winding-up of any such society which at the passing of the Act (August 25th, 1894) were pending in any County Court may, on application by or on behalf of the registrar, with the consent of the Secretary of State, be transferred to the High Court.

If, therefore, the amount standing to the credit of shares in the society on which no advance has been made exceeds £10,000, the petition must be presented to the High Court, or in the case of a society within the jurisdiction of either of the Palatine Courts of Lancaster or Durham, either to the High Court or the Palatine Court having jurisdiction. If the amount does not exceed £10,000, and the principal place of business of the society is situate within the jurisdiction of a County Court having jurisdiction

of the register, and upon such cancellation or during suspension the society would appear to be in the position of an unincorporated society.

(a) See form of dissolution, *post*, p. 582.

(b) The enactments from time to time in force for the winding-up of companies in the High Court applied to the winding-up of building societies in the County Court,

whether such enactments became law before or after the Building Societies Act, 1874; *re Portsea Island Building Society* [1893], 3 Ch. 205. They would also apply to the winding-up of a building society pending in the County Court at the time of the passing of the 1894 Act, and not transferred to the High Court; *re Ferndale Industrial Co-operative Society* [1894], 1 Q. B. 828.

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Life assurance companies.—The conditions upon which the Court will make a winding-up order on the petition of a policy-holder (*a*), or shareholder, in the case of a life assurance company are an extension of the provisions of s. 82 of the Act of 1862. By s. 2 of the Life Assurance Companies Act, 1870, the term "company" means any person or persons, corporate or unincorporate, not being registered under the Acts relating to friendly societies, who issue or are liable under policies of assurance upon human life within the United Kingdom, or who grant annuities upon human life within the United Kingdom" (*b*).

An order will be made where the company is shewn to be insolvent, although the policy is not yet due. In determining the question of insolvency, the Court can now, in case of life assurance companies, give a wider definition than in the case of ordinary companies (*c*), and will take into account its contingent or prospective liability under policies and other existing contracts. But security for costs must be given, and a *prima facie* case established to the satisfaction of the judge before the hearing of the petition, except where the company is being wound up voluntarily (*d*). The last remarks do not apply to a creditor's petition (*e*).

In the case of a proprietary company having an uncalled capital of an amount sufficient, with the future premiums receivable by the company, to make up the actual invested assets equal to the amount of the estimated liabilities, the Court will suspend further proceedings on the petition for a reasonable time, to enable the uncalled capital, or a sufficient part, to be called up; and if at the end of the original, or any extended, time for which the proceedings shall have been suspended, such an amount has not been realized by means of calls as, with the already invested assets, will be equal to the liabilities, an order will be made on the petition

(*a*) Including the holder of a current policy and an annuitant. See s. 2 of the Life Assurance Companies Act, 1870, for definition of "policy-holder."

(*b*) The definition of an insurance company is by s. 3 of the Companies Act of 1862, as follows: "For the purposes of this Act a company that carries on the business of insurance in common with any other

business or businesses shall be deemed to be an insurance company."

(*c*) *London and Manchester Ass.*, 1 Ch. D. 406; and *National Funds Ass. Co.*, W.N. 1876, p. 239.

(*d*) *British Alliance Ass. Corp.*, 9 Ch. D. 635. See s. 21 of the Life Assurance Companies Act, 1870.

(*e*) *British Imperial Ass. Co.*, W. N. 1875, p. 184.

as if the company had been proved insolvent (*a*). But the proceedings will not be suspended if the Court is satisfied that a call would not produce anything (*b*). A policyholder may present a petition under the Act of 1870, although his debt does not amount to £50 (*c*).

An unregistered mutual life assurance society can, by virtue of s. 2 of the Life Assurance Companies Act, 1870, be wound up under the provisions of the Companies Act, 1862 (*d*); or its contracts may be reduced. A winding-up order can be made in the case of insurance companies formed in the interval between the passing of the Joint Stock Companies Acts of 1856 and 1857, as they will be deemed unregistered companies within s. 199 of the Act of 1862 (*e*).

Trades Union societies.—Previous to 34 & 35 Vict. c. 31, trades union societies were in restraint of trade, and illegal. Societies of this description may now be registered under that Act, but the Industrial and Provident Societies Acts, the Friendly Societies Acts, and the Companies Acts, do not apply to them (*f*).

Foreign companies.—The Court has jurisdiction under s. 199 to wind up foreign companies under the Act, and it seems that the material consideration with respect to such companies is whether there was an intention when they were formed to carry on business at any time in England (*g*). If there has been no such intention, and no means of doing substantial justice exist, and no control can be obtained over the shareholders in this country, an order will be refused (*h*).

But it seems that although a company has never

(*a*) See s. 21 of the Life Ass. Cos. Act, 1870. See also ss. 2 and 18 of that Act. See p. 490 as to the petition. As to the winding-up of a subsidiary company being ancillary to the winding-up of the principal company, see s. 4 of the Life Ass. Cos. Act, 1872.

(*b*) *National Funds Ass. Co.*, W. N. 1876, p. 239.

(*c*) *British Alliance Ass. Corp.*, 9 Ch. D. 635.

(*d*) *Great Britain, &c., Soc.*, 16 Ch. D. 246. But see *Padstow Total Loss Ass.*, 20 Ch. D. 137, and cases, p. 6, under "unregistered companies, &c."

(*e*) *Bank of London, &c., Ins. Ass.*, 6 Ch. 421.

(*f*) See *Lindley* (5th Ed.), 917, *R. v. Registrar of Friendly Societies*, L. R. 7 Q. B. 741.

(*g*) *Commercial Bank of India*, 6 Eq. 517, approved in *Matheson Bros. Ltd.*, 27 Ch. D. 225. See *Imperial Anglo-German Bank*, 26 L. T. 229; *Jarvis Conklin Mortgage Co.*, 11 T. L. R. 373. See 53 and 54 Vict. c. 63, s. 32 (3).

(*h*) *Union Bank of Calcutta*, 3 De G. & Sm. 253, where order was refused. But see *Bulkeley v. Schutz*, 3 P. C. 764; *Bateman v. Service*, 6 App. Cas. 386.

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transacted any business in England, and notwithstanding the fact that all its shareholders are foreigners resident abroad, a winding-up order may be made if it has merely contemplated transacting some kind of business here, and has been registered under the Act (*a*). So, also, where the control and management is to be directed from, and carried on in, this country (*b*). And further, a company, having only a branch office in this country, but incorporated by registration, and having its principal place of business abroad, has been wound up under the Act (*c*). So, again, an unregistered company, formed and having its principal place of business in New Zealand, but having a branch office, agent, assets, and liabilities in England (*d*); and a company incorporated and carrying on business in Australia, having a branch office in London, and English creditors and assets in England, but not registered in England (*e*). But there is no jurisdiction to wind up a foreign company which has carried on business in England by means of agents, but which has no branch office of its own here (*f*). A company may be wound up, though it has no registered office in this country (*g*).

The mere existence of a winding-up order made by a foreign court does not take away the right of the Court in this country to make an order here, although the Court will, as a matter of international comity, have regard to the order of the foreign court (*h*). So, where a petition stood over for a time, and when it came on again, it appeared that a petition to wind up had been meanwhile presented in Australia and a provisional liquidator appointed there, but it was not proved that an order had been made, it was held that the jurisdiction which existed at the time when the petition was presented could not be affected by subsequent proceedings in Australia (*i*). And where a company, having a registered office in

(*a*) *Princess of Reuss v. Ros*, L. R. 5 H. L. 175; *Tumavouri Mining Co.*, 17 Eq. 534. See *General Co. of Land Credit*, 5 Ch. 363.

(*b*) *Madrid, &c., Ry. Co.*, 2 Mac. & G. 169. See also *Peruvian Ry. Co.*, 2 Ch. 617; *Factage Parisien, &c.*, 34 L. J. Ch. 140; *Ex p. Chippendale*, 4 De G. M. & G. 19; *Barclay's Case*, 26 Beav. 177; *Ex p. Wolsely*, 3 De G. & S. 101. As to a company with assets in America, see *Sayre v. Salem Flour Mills Co.*, 14 C. of S. Cas. 441

(Se.).

(*c*) *Commercial Bank of India*, *supra*. *Re Federal Bank of Australia*, 62 L. J. Ch. 561.

(*d*) *Matheson Bros., Ltd.*, *supra*.

(*e*) *Commercial Bank of S. Australia*, 33 Ch. D. 174.

(*f*) *Lloyd Generale Italiano*, 29 Ch. D. 219.

(*g*) *Mercantile Bank of Australia* [1892], 2 Ch. 204.

(*h*) *Matheson Bros., Ltd.*, *supra*.

(*i*) *Commercial Bank of S. Australia*, *supra*.

England, but having a branch office and the bulk of its business in Australia, resolved to wind up voluntarily, and shortly afterwards an order was made in Australia for the compulsory winding-up of the company, it was held that the compulsory order in Australia did not supersede, or interfere with, the voluntary winding-up in this country, any order made by the Australian Courts for winding-up in Australia being merely ancillary to any winding-up taking place in this country (*a*).

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Mining companies within the Stannaries.—Formerly, the law as to winding-up companies formed for working mines within the jurisdiction of the Stannaries, was not in a settled state; but such companies may now be wound up under the Acts of 1862 to 1890 (*b*). Where a company is formed for working mines within the Stannaries, “*or elsewhere in England*,” but is not shown to be actually working mines beyond the limits of the Stannaries, the Court with jurisdiction in winding-up is the Stannaries Court (*c*). Under the Act of 1862 it was held that the High Court had jurisdiction in such case (*d*), but it seems that *re Silver Valley Mines* (*e*) is no longer law (*f*). The fact that some of the objects of the company are to be carried out beyond the district does not exempt the company from the jurisdiction of the Stannaries Court (*g*).

S. 81 of the Act of 1862 is now repealed by the Companies (Winding-up) Act, 1890 (*h*), which, by s. 1, sub-s. 4, gives jurisdiction to the Stannaries Court to wind up when the company is formed for working mines within the Stannaries, and is not shown to be actually working mines or engaged in any other undertaking beyond those limits, or to have entered into a contract for such work or undertaking. And the Stannaries Court is also the proper tribunal for an application for the removal of a liquidator in a voluntary liquidation, and if applications are made to

(*a*) *North Australian Territory Co. v. Goldsborough & Co.*, 16 L. T. 716.

(*b*) The statutes relating to the Stannaries jurisdiction are: 4 & 5 Will. 4, c. 42; 6 & 7 Will. 4, c. 106; 2 & 3 Vict. c. 58; 7 & 8 Vict. c. 65; 7 & 8 Vict. c. 105; 11 & 12 Vict. c. 83; 18 & 19 Vict. c. 32; 32 & 33 Vict. c. 19; 50 & 51 Vict. c. 43.

(*c*) *New Terras Tin Mining Co.* [1894], 2 Ch. 344.

(*d*) *Silver Valley Mines*, 18 Ch. D. 472.

(*e*) *Supra*.

(*f*) *New Terras Tin Mining Co.*, *supra*.

(*g*) *Penhale, & Co.*, 2 Ch. 398. And see *New Terras Tin Mining Co.*, *supra*.

(*h*) 53 & 54 Vict. c. 63, s. 33. See s. 28 of the Stannaries Act, 1887, which provided that “the Court of the vice-warden of the Stannaries shall have the same

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the High Court they will be transferred to the Court of the Vice Warden of the Stannaries (*a*).

Sect. 38 of the Stannaries Act, 1869, provides for the hearing of a petition for winding-up in London under the circumstances there referred to.

Savings Banks.—Trustee Savings Banks, certified under the Trustee Savings Banks Act, 1863, may be wound up under the Companies Acts as unregistered companies (*b*).

jurisdiction in the winding-up of all companies formed for working mines within the Stannaries (unless they are shown to be then actually working mines, or to be engaged in any other undertaking, or to have entered into any contract for such working or undertaking beyond the limits of the Stannaries), as has heretofore been exercised by the said Court, pursuant to the eighty-first section of the Companies Act,

1862, in respect of companies engaged in working any mine within and subject to the jurisdiction of the said Stannaries."

(*a*) *New Terras Tin Mining Co.*, *supra*. Petitioner ordered to pay costs of presenting petition to wrong Court. *In re Butler, &c.*, 35 Sol. Jo. 269.

(*b*) *Trustee Savings Bank Act*, 1863, 50 & 51 Vict. c. 47, ss. 3 and 4; and see *ante*, p. 9.

CHAPTER III.

WHEN A COMPANY CAN BE WOUND UP BY THE COURT.

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|--|-----------------------------|
| I. Special resolution. | VI. "Just and equitable." |
| II. Business not commenced. | Discretion of Court. |
| III. Suspending business for a whole year. | After voluntary winding-up. |
| IV. Less than seven members. | Unregistered company. |
| V. Inability to pay debts. | Striking off Register. |
| Test of Insolvency. | |

THE circumstances under which a company may be wound up by the Court are set out in s. 79 of the Act of 1862. The Act applies to companies formed and registered, and to those only registered under the Companies Acts (*a*). This subject will now be considered under I. to VI.

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I. Special resolution.—An order to wind up a company may be made whenever the company has passed a special resolution (as defined by s. 51 requiring the company to be wound up by the Court (*b*)).

II. Business not commenced.—Whenever the company does not commence its business within a year from its incorporation, or suspends its business for the space of a whole year, a winding-up order may be obtained (*c*); but orders are seldom made on this ground. The date of incorporation mentioned in the certificate is to be deemed to be the date at which the company is incorporated under the Act (*d*). An order will be made on a shareholder's petition, if it is clear to the Court that the business never will be commenced, although there are no debts and the company has received no money (*e*), and notwithstanding that the order is opposed by a majority of the shareholders who unreasonably refuse to pass resolutions for a voluntary winding-up (*e*). But under somewhat similar circumstances,

(*a*) See ss. 176, 177; and for the definition of Joint Stock Companies Acts, see s. 175.

of incorporation and its effect, see s. 191.

(*b*) S. 79 (1).

(*c*) S. 79 (2).

(*d*) S. 192. As to the certificate

(*e*) *Tumacacori Mining Co.*, 17 Eq. 534. But the order, it seems, was never drawn up, see *New Gas Generator Co.*, 4 Ch. D. 874, 876.

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Bacon, V.C., in a later case dismissed the petition with costs (a).

The mere fact that a company has not commenced its business within a year is not alone sufficient ground for a winding-up order if the Court is satisfied with the reasons given for the delay, and there seems to be a *bona fide* intention to carry on the business (b). In one case, there was a delay of two years, but certain steps had been taken shewing an intention to carry on the business of the company, and a large majority of the shareholders opposing the petition, an order was refused (c). So where a company incorporated to carry on business at home and abroad commenced business in a foreign country, and there appeared to be a *bona fide* intention to commence business in this country (d).

On the other hand, it is clear that although the year has not expired, a winding-up order will be made if the facts bring the petition within the other heads of s. 79; but there must be exceptional grounds for exercising this jurisdiction, as, for instance, in the case of a fraudulent company (e); or where it is apparent within a year that the whole thing is abortive (f).

III. Suspending business for a whole year.—The only question is whether the company has abandoned the purpose for which it was formed, and the Court must see whether the company is in any way carrying into effect the objects stated in the memorandum. The Court must be satisfied that there has been an intention on the part of the company to abandon its business, or inability to carry it on (g). It is not an abandonment of the objects of a company if, when established to accomplish three or four purposes, it abandons one and carries on the others, provided such abandonment does not alter the fundamental principle of the company, and such a change does not justify a shareholder in alleging that the company has abandoned its objects (h).

(a) *New Gas Generator Co.*, *supra*.

(b) *Metropolitan Ry., Warehouseing Co.*, 36 L. J. Ch. 827.

(c) *Petersburg Gas Co.*, W. N. 1874, p. 196. See *Middlesborough Assembly Rooms Co.*, 14 Ch. D. 104.

(d) *Capital Fire Insurance Ass.*, 21 Ch. D. 209.

(e) *London and County Coal Co.*, 3 Eq. 355; *Langham Skating*

Rink Co., 5 Ch. D. 669, 685; *post*, p. 30. See also *Hy and Malt, &c., Co.*, W. N. 1866, p. 222.

(f) See the cases *post*, under "Just and equitable," and *German Date Coffee Co.*, 20 Ch. D. 169, 189.

(g) *Tondin Patent Horse Shoe Co.*, 55 L. T. 314.

(h) *Norwegian Titanic Iron Co.*, 35 Beav. 223, *per M.R.* See *New*

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Upon the question of the intention of the company to abandon its business, the Court will have regard to the opinion and wishes of the majority of shareholders whose names are on the register (*a*). And the Court will not disregard the wishes of a large majority of the shareholders (*b*); and in *Middlesborough Assembly Rooms Co.* (*c*), on a shareholder's petition, the Court of Appeal agreed with Bacon, V.C., that the company had suspended its business for a year, but reversed the judgment, as fully four-fifths in value of the shareholders opposed the winding-up. On the other hand, where the Court is satisfied that the subject-matter of the business for which a company was formed has substantially ceased to exist, a majority of shareholders cannot hold a minority to the speculative continuation of a scheme which has failed, and the Court will make an order for winding up the company, notwithstanding that it is shewn to be solvent, and a large majority desire to continue to carry on the company (*d*).

If the substratum of the company has failed, and it is impossible to carry out the objects for which it was formed, the company will be wound up, although the petition is presented within a year from its incorporation (*e*).

The amalgamation of one company with another does not, unless there are other grounds, constitute a suspension of business sufficient to support a petition by a shareholder to wind up within sub-s. 2 of s. 79 (*f*). But an order will be made to wind up a company which is unable to pay its debts after having transferred its business to another company which refuses to discharge such debts (*g*).

IV. Less than seven members.—A winding-up order will be made whenever the members are reduced in number to

Gas Co., 5 Ch. D. 703; petition alleging that the whole substratum of the company had failed, dismissed by C. A. as demurrable. See also *Patent Bread, &c., Co.*, 14 L. T. 582; *Langham Skating Rink Co.*, *supra*; *Electric Telegraph Co. of Ireland*, 22 Beav. 471.

(*a*) *Tomlin Patent Horse Shoe Co.*, *supra*.

(*b*) See s. 91. See now 53 & 54 Vict. c. 63, s. 13. As to the directors' right to wind up, where the project cannot be carried out, see *Bank of Switzerland v. Bank of Turkey*, 5 L. T. 549.

(*c*) 14 Ch. D. 104. See *German*

Date Coffee Co., 20 Ch. D. 169.

(*d*) *Haven Gold Mining Co.*, 20 Ch. D. 151. *Red Rock Mining Co.*, 61 L. T. 785.

(*e*) *German Date Coffee Co.*, *supra*, and *post*, p. 33.

(*f*) *British Provident Ass. Co.*, 1 Dr. & S. 113; *National Finance Corp.*, 14 W. R. 907; *Ex p. Cookson*, 15 Jur. 615.

(*g*) *Ex p. Lawton*, 1 K. & J. 204; *Pennant, &c., Mining Co.*, 15 Jur. 1192; *Ex p. Dee*, 3 De G. & S. 112. As to how an invalid amalgamation under ss. 161, 162, is impeached, see *post*, p. 438.

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less than seven (*a*). No decision can be found where the Court has made an order merely on this ground, although there may be cases which to some extent appear to be so decided (*b*).

V. Inability to pay debts.—Inability to pay debts is a fourth ground upon which a company may be wound up (*c*).

(1.) Demand of sum exceeding £50.

(2.) Execution returned unsatisfied.

(3.) Inability to pay debts.

(1.) A company is deemed to be unable to pay its debts whenever a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding £50 then due, has served on the company, by leaving the same at their registered office, a demand requiring the payment of the sum so due, and the company has for three weeks neglected to pay or to secure or compound for such sum (*d*). The demand may be left at the unregistered office if there is no registered office (*e*). The twenty-one days must have expired before the petition is presented (*f*). But a petitioner is not bound to present his petition immediately upon the expiration of three weeks after serving the notice, and he does not waive his demand by reasonable delay (*g*).

The statutory demand is only one way of proving inability to pay debts, and this may be proved by other means; and the debt need not amount to £50 (*h*). The above provision is not imperative, and an order will not be made if there is a reasonable hope that an arrangement will be arrived at by the company for payment of its debts, or the petitioning creditor cannot gain anything by a winding-up order; and the Court, under such circumstances, will have regard to the wishes of the majority of creditors (*i*). But in the absence

(*a*) S. 79 (3). *National Debenture & Assets Corp.* [1891], 2 Ch. 505. As to the consequence of carrying on business with less than seven, see s. 48.

(*b*) As to finding, after a winding-up order, that one of the seven subscribers was an infant, see *Re Nassau Phosphate Co.*, 2 Ch. D. 610; *Re Hertfordshire Brewery Co.*, 43 L. J. Ch. 358; *Re Laxon & Co.* (2) [1892], 3 Ch. 555.

(*c*) S. 79 (4). See *Alliance Contract Co.*, W. N. 1867, p. 218.

(*d*) See s. 80 (1), and *cf.* s. 62, as to leaving by hand.

(*e*) *British and Foreign Gas*

Co., 12 L. T. 368.

(*f*) *Catholic Publishing Co.*, 2 De G. J. & S. 116. See *re Knaul's Trusts* [1895], 1 Ch. 538.

(*g*) *Imperial Hydropathic Hotel Co.*, 49 L. T. 147. See this case as to waiver.

(*h*) See Chap. IV. under "Creditor's Petition."

(*i*) Ss. 86, 91; 53 & 54 Viet. c. 63, s. 13; *Chapel House Colliery Co.*, 24 Ch. D. 259; *Brighton Hotel Co.*, L. R. 6 Eq. 339; *St. Thomas' Dock Co.*, 2 Ch. D. 116; *Great Western Forest of Dean Coal Co.*, 21 Ch. D. 769; *Krasnapolsky, &c., Co.* [1892], 3 Ch. 174; *Edgbaston*

of any other circumstances, where the company is unable to pay its debts, as soon as the debt is proved, the petitioner is entitled to a winding-up order as of right (a), if there are assets which can be made available in a winding-up (b), and he has no other way of obtaining payment (c). Sometimes where there are no available assets, a winding-up order is made, but the judge directs that no proceedings are to be taken under it without his special authority. For although a company may allege that there are no assets, a compulsory order may be made (d); specially where a case for investigation is made. To justify the making of such an order, it is sufficient to show that an investigation under the Act of 1890 is likely to turn out to the advantage of the unsecured creditors (e).

If the petitioner's debt exceeds £50, a winding-up order is not bad because it is based on a demand which subsequently appears to be excessive (f).

Where, however, there is a *bonâ fide* dispute as to the amount due, this sub-section will not apply, though the debt be admitted to exceed £50 (g); for "neglected" means "omitted to pay without reasonable excuse" (h). A petition will therefore be dismissed in the case of a disputed debt, unless the Court is of opinion that if the debt is established

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Brewery Co., In re, 68 L. T. 341. See *London Wharfing, &c., Co.*, 35 Beav. 37; *Western of Canada Oil Co.*, 17 Eq. 1. See *Burnett v. Oregonian Ry. Co.*, 11 C. of S. Cas. 912 (Sc.), where order was refused as neither necessary nor desirable. And see also p. 45, as to a creditor's petition.

(a) *Uruguay Central Rail. Co.*, 11 Ch. D. 372; *The Consolidated Bank*, W. N. 1866, p. 232; *General Rolling Stock Co.*, 34 Beav. 314. See *Isle of Wight Ferry Co.*, 2 H. & M. 597.

(b) *Chapel House Colliery Co.*, *supra*, 24 Ch. D. at p. 269; *Olathe Silver Mining Co.*, 27 Ch. D. 278 (inquiry directed in Chambers); *The Company or Fraternity of Free Fishermen of Faversham*, 36 Ch. D. 329; in Court below, 56 L. T. 422; *Krasnapolsky, &c., Co.*, *supra*; *re Edgbaston Brewery*, *supra*. See *St. Thomas' Dock Co.*, 2 Ch. D. 116, 119.

(c) *Second Commercial Benefit*

Building Soc., 48 L. J. Ch. 753.

(d) *Lacey & Co.*, 46 L. J. Ch. 660; *Olathe Silver Mining Co.*, *supra*.

(e) *Krasnapolsky Restaurant Co.*, *In re* [1892], 3 Ch. 174.

(f) *Cardiff Coal Co. v. Norton*, 2 Ch. 405, 410.

(g) *Brighton Club, &c., Co.*, 35 Beav. 204; *Ex p. Owen*, 4 L. T. 684; *Gold Hill Mines*, 23 Ch. D. 210; *Compagnie Générale des Asphaltes*, W. N. 1883, p. 17, cited *post*, p. 26; *Cunninghame v. Walkinshaw Oil Co.*, 14 C. of S. Cas. 87 (Sc.). See *Brown v. Keeble*, W. N. 1879, p. 173. See *post*, p. 45, as to the circumstances under which the Court will make an order on a creditor's petition. See *Commercial Bank of Scotland v. Lanark Oil Co.*, 14 C. of S. Cas. 147 (Sc.), as to a plea by the company that debt is sufficiently secured.

(h) *London and Paris Banking Co.*, 19 Eq. 444.

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the company will be unable to pay its debts (a); or it may be ordered to stand over upon security for the debt being given. But the hearing of the petition will not be adjourned as a matter of course under s. 86 until a *bona fide* disputed debt has been established, although that plan might be an expedient and advisable way of disposing of the question; but before directing an action to try the question of debt, the Court will see whether the debt is disputed simply to get rid of the petition or *bona fide* because it is not due (b). If the company dispute the debt on any ground which cannot be considered as substantial, the question will be decided by the Court at the hearing of the petition (c). A petitioner has been held to be entitled to his costs where a disputed debt was subsequently established and paid by the company, and the petition was accordingly withdrawn (d).

The drawing up of the order may in some cases be delayed in order to give the company a chance of satisfying the claim (e); but when it was asked that the drawing up of the order might be postponed for a fortnight in order that the company might satisfy its creditors with the proceeds of a call, the application was refused (f).

Although a petition is not the way to enforce a *bona fide* disputed debt, still if the petitioner has good reason to think the company is trifling with him, he may be entitled to succeed on his petition for the purpose of getting payment of a debt, when the company has no reasonable excuse for refusing payment (g); and in a proper case, it seems that the Court would order the sum in dispute to be paid into Court (h).

Where, in the case of a disputed debt, the liquidators in a voluntary winding-up agreed to make themselves personally

(a) *London Wharfing, &c., Co.*, 35 Beav. 37.

(b) *King's Cross Industrial Dwellings Co.*, 11 Eq. 149; *Imperial Guardian Assurance*, 9 Eq. 447; *Great Britain Mutual, &c., Soc.*, 16 Ch. D. 246. As to adjourning the hearing on these grounds, see *Catholic Publishing Co.*, 2 De G. J. & Sm. 116; 33 L. J. Ch. 325; *Universal Bank, &c.*, 14 W. R. 906; *Margate Hotel Co.*, W. N. 1888, p. 73.

(c) *Imperial Silver Quarries Co.*, 16 W. R. 1220; *King's Cross Industrial Dwellings Co.*, *supra*; *Great Britain Mutual, &c., Soc.*,

supra; *Brighton Club, &c., Co.*, 35 Beav. 201.

(d) *Railway Finance Co.*, 14 L. T. 507.

(e) But the Registrar's Office object to the practice of making winding-up orders which are not to be drawn up until a future date, *re Baker, Tuckers & Co.*, W. N. (1894), p. 33.

(f) *Home Assurance Ass.* (2), 12 Eq. 112.

(g) *Imperial Hydropathic Hotel Co.*, 49 L. T. 147.

(h) *Compagnie Générale des Asphaltes*, *supra*.

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liable for, and to set apart a sufficient sum out of the assets to pay the debt when established, together with interest and costs, the Court ordered the petitioner to pay all costs since the offer, and directed the petition for a compulsory order to stand over until after the trial of an action pending in respect of the claim (*a*).

If a debt is *bonâ fide* disputed by the company, and a creditor presents a winding-up petition merely in order to enforce his claim, the Court will discourage this system of coercion to compel payment of an alleged debt from a company which is willing and able to pay when the debt is established (*b*); and it may be dismissed with costs (*c*). The presenting of such a petition may be restrained by injunction (*d*). For where a petition to wind up is improperly filed, the Court has jurisdiction, on motion, to restrain the advertisement of the petition and stay all proceedings under it, or to dismiss it (*e*).

So, where there is an appeal, the advertisement of the winding-up order may be restrained upon lodging at the bank to the credit of a Chancery suspense account the sum claimed by the creditor in his petition (*f*).

A claim for unliquidated damages is not sufficient to support a petition (*g*); nor is a debt of uncertain nature (*h*); nor a bill of exchange not matured at the date of the filing of the petition (*i*).

A judgment creditor presenting a petition will not be compelled to refute by other evidence an allegation that the judgment was obtained by fraud, but the Court will direct the winding-up order to be good, unless the company

(*a*) *Imperial Guardian Assurance*, 9 Eq. 447. See *Inventors' Assoc.*, 2 Dr. & S. 553, where the circumstances were exceptional.

(*b*) *Catholic Publishing Co.*, 2 De G. J. & S., 116; *Imperial Guardian Assu.*, *supra*; *London and Paris Banking Co.*, 19 Eq. 444; *Brown v. Keeble*, W. N. 1879, p. 173.

(*c*) *Public Works, &c., Co.*, 4 Times L. R. 670.

(*d*) *Cadiz Waterworks Co. v. Barnett*, 19 Eq. 182. See also *Cercle Restaurant Co. v. Lavery*, 18 Ch. D. 555; *Niger Merchants Co. v. Capper*, 18 Ch. D. 557, n.; *General Exchange Bank*, 14 L. T. 582; *Rhydydefed Colliery Co.*, 3 De G. & J. 80; *Merchants Banking Co.*

v. Hough, W. N. 1874, 230; *New Travellers' Chambers v. Cheese*, 70 L. T. 271. See *Gold Hill Mines*, 23 Ch. D. 210.

(*e*) *Gold Hill Mines*, *supra*. *Ex p. Advance Boiler Co.* (reported as "*re A. Company*") [1894], 2 Ch. 349.

(*f*) See *Paris Skating Rink Co.*, 5 Ch. D. 959, and form, *post*, p. 516.

(*g*) *Pen-y-Van, &c., Co.*, 6 Ch. D. 477. As to presenting a petition after a tender made, see *Yniscedwyn Iron Co.*, 19 W. R. 194.

(*h*) *European Banking Co.* *Ex p. Baylis*, 2 Eq. 521 (a debt attached in the Lord Mayor's Court).

(*i*) *Re W. Powell & Sons*, W. N. (1892) 94.

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within a certain time commence an action and impeach the debt (*a*). But where, upon the hearing of a petition presented by a judgment creditor, evidence is before the Court upon which the issue of whether the judgment was or was not obtained by collusion can be decided, the petition will be forthwith disposed of, notwithstanding that the judgment has not been impeached in an action at law (*b*).

(2.) A company will also be deemed unable to pay its debts whenever in England or Ireland any execution or other process against the company is returned unsatisfied in whole or in part (*c*).

But it is not necessary that a judgment creditor should issue execution to come within this sub-section when the company have informed him that they have no assets upon which he might levy (*d*).

Whenever, in Scotland, the *induciae* of a charge for payment on an extract decree, &c., have expired without payment being made (*e*).

(3.) The third indication of insolvency includes the two first, and although a case cannot be made under those heads, it may be brought within the present sub-section. For a company will be deemed to be insolvent whenever it is proved by any evidence to the satisfaction of the Court that it is **unable to pay its debts** (*f*), that is to say, debts which are actually due, for which a creditor could claim immediate payment. But if a petitioner relies upon either of the other grounds he must prove them (*g*). Future liabilities or profits will not be taken into account in a consideration as to the solvency of a company (*h*), except in a case of a life insurance company by virtue of the Life Assurance Companies Act, 1870 (*i*). It is no answer to an application to wind up, to say that the difficulties are temporary (*k*).

The following examples show when the company will

(*a*) *Bowes v. Hope Insurance Soc.*, 11 H. L. C. 389. See *Ex p. Lennox*, 16 Q. B. D. 315; *London India Rubber Co.*, 1 Ch. 329, 331.

(*b*) *United Stock Exchange Co.*, 51 L. T. 687.

(*c*) See s. 80 (2).

(*d*) *Flagstaff Mining Co.*, 20 Eq. 268.

(*e*) S. 80 (3).

(*f*) S. 80 (4). As to what is a sufficient declaration of insolvency by the company, see *Phoenix*

Bessemer Steel Co., 4 Ch. D. 108.

(*g*) As to the Court not ordering the manager, on a petition to wind up, to produce documents to prove its insolvency, see *European Ass. Soc.*, 18 W. R. 9.

(*h*) *European Life Assce. Soc.*, 9 Eq. 122. As to insolvency, see *infra*.

(*i*) 33 & 34 Vict. c. 61, s. 21.

(*k*) *Norwich Yarn Co.*, 12 Beav. 366.

be considered unable to pay its debts;—an intimation by a company to a judgment creditor that it has no assets on which he can levy (*a*); that all its property has been taken possession of by a mortgagee (*b*);—dishonour of its acceptance in part payment of goods purchased, although no demand has been made under sub-s. 1 of s. 80 (*c*). But where a case is made out, the Court will, nevertheless, have regard to the wishes of other creditors, and may decline to make a winding-up order (*d*).

When the company admits insolvency, and it is not suggested that the business can be carried on, an order will be made on a creditor's petition, although a shareholder oppose it, and offer to pay the petitioner's debt (*e*).

Test of Insolvency.—The test for deciding the commercial insolvency of a company is whether it is reasonably certain that the existing and probable assets are insufficient to meet the existing liabilities. In this consideration assets which might probably hereafter be of value but which it is not possible to realize at the time of applying this test cannot affect the determination of the question (*f*). The paid-up capital is not a debt of the company (*g*). The subscribed but uncalled-up capital should be taken into account, for if the uncalled-up capital is ample to cover the liabilities, a company cannot be considered insolvent (*h*). But a company has been wound up where a call had been made, but was not payable for two months, which would have enabled the company to meet its engagements (*i*). Evidence of the insolvency of the shareholders might, it seems, justify the Court in assuming that the uncalled-up capital was not available assets (*k*). A company may be able to pay its existing debts, but if its assets, with its uncalled-up capital, are not enough to meet its existing liabilities, a winding-up order will generally be made (*l*). But the winding-up process of the Court will not be allowed to be used as the means

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(*a*) *Flagstaff Mining Co., supra.*

(*b*) *Yate Collieries, &c., Co.,* W. N. 1883, p. 171 (petitioner's debt in this case under £50).

(*c*) *Globe Iron and Steel Co.,* 20 Eq. 337.

(*d*) See s. 91. See 53 & 54 Vict. c. 63, s. 13.

(*e*) *Re Pavy's, &c., Fabric Co.,* 24 W. R. 91.

(*f*) *European Life Assce. Soc.,* 9 Eq. 122. See *British Oil Co.,*

15 L. T. 601.

(*g*) Ss. 80; 199, cl. 4.

(*h*) *European Life Assce. Soc.,* 9 Eq. 122. See *British Oil Co.,* 15 L. T. 601.

(*i*) *International Contract Co. Ex. p. Spartali,* 14 L. T. 726.

(*k*) See *per James, V.-C., European Life Assce. Soc., supra;* Buckley, 218 (6th ed.).

(*l*) *European Life Assce. Soc., supra.*

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of evoking a judicial decision as to the probable success or non-success of a company as a commercial speculation (*a*).

In determining whether or not a life insurance company is insolvent, the Court is to take into account its contingent or prospective liability under policies and annuity and other existing contracts (*b*).

VI. "Just and equitable."—Lastly, a winding-up order will be made whenever the Court is of opinion that it is just and equitable that the company should be wound up (*c*). This clause, however, is restricted to matters *ejusdem generis* with the four previous clauses; but the Court can by virtue of this clause make a winding-up order in cases which are not within the four previous clauses where a strong case is made out (*d*).

This matter will be conveniently dealt with under the following sub-heads.

The mere fact that the business of a solvent company has been carried on at a loss will not be sufficient ground for a winding-up order in favour of the minority and against the wish of the majority of the shareholders (*e*). Under such circumstances, all that the Court possibly may do will be to direct that the wishes of the shareholders should be ascertained at a meeting to be called (*f*); and although in one case, where a mining business was carried on at a loss, the order was made against the wishes of the majority, there were also other strong grounds in support of the petition (*g*).

(*a*) *Per* Lord Cairns in *Suburban Hotel Co.*, 2 Ch. 737, 750.

(*b*) See 33 & 34 Vict. c. 61, s. 21. As to the test of insolvency of an insurance company, see *London and Manchester, &c., Ass.*, 1 Ch. D. 466; *British Alliance Corp.*, 9 Ch. D. 635.

(*c*) S. 79 (5).

(*d*) *Langham Skating Rink Co.*, 5 Ch. D. 669.

(*e*) *Suburban Hotel Co.*, 2 Ch. 737; *Anglo-Greek Steam Co.*, 2 Eq. 1; *London and County Coal Co.*, 3 Eq. 355; *Joint Stock Coal Co.*, 8 Eq. 146; *Middlesborough Assembly Rooms Co.*, 14 Ch. D. 104. See also *Ex p. Fox*, 6 Ch. 176; *London Suburban Bank*, 6 Ch. 641; *Ex p. Spackman*, 18 L. J. Ch. 261; 1 Mc. & G. 170; *National*

Live Stock Ins. Co., 26 Beav. 153; *Re Patent Artificial Stone Co.*, 34 Beav. 185; *European Life Assn. Soc.*, 9 Eq. 122; *Princess of Reuss v. Bos.*, L. R. 5 H. L. 176; *Wear Engine Works Co.*, 10 Ch. 188; *Rica Gold Washing Co.*, 11 Ch. D. 36.

(*f*) *Id.*; and see *Fastage Parisien, &c.*, 34 L. J. (Ch.) 140; *Hop and Malt Exchange Co.*, W. N. 1886, p. 222.

(*g*) *G. N. Copper Mining Co.*, 20 L. T. 264. And see *re General Phosphate Corporation*, W. N. (1893), p. 142, order made against wishes of shareholders because company could not be worked at a profit, and its substratum was gone. See *Diamond Fuel Co.*, 13 Ch. D. 400; *Lacey & Co.*, 46 L. J. (Ch.) 660. See also, *post*, pp. 51, 52.

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There is a considerable difference between a limited and an unlimited company when a petition is presented on the ground that the business is a losing concern. Where the capital of an unlimited company is all paid up and expended, and the affairs of the company are carried on at an increasing loss, the right of a shareholder to a winding-up order rests upon considerations which are distinguishable from those which apply to a limited company in the same position, and an order will be made in the case of an unlimited, where it would be refused against a limited company (*a*).

The Court has long ago decided that it would dissolve a partnership where it appeared that the business could not be carried on according to the true intent and meaning of the partnership articles, although one partner objected (*b*). And if it is shewn that the whole of the business which the company was incorporated to carry on has substantially become impossible, it is, within sub-s. 5 of s. 79, “just and equitable” that the company should be wound up, although a large majority of the shareholders may desire to continue to carry on the company (*c*), or object to a compulsory order (*d*), and notwithstanding that a prior petition is pending in another branch of the Court (*e*). So, also, where the object of the company has failed (*f*). Where there are no debts, the Court has power, if the substratum of a company has gone, to order a winding-up, even against the wishes of the majority of the shareholders, on a shareholder’s petition (*g*). Shareholders have a right to refuse to have the business continued at the cost of a reserve fund, which they have contracted to subscribe to only in the event of a winding-up (*h*). And where a company

(*a*) See the cases in notes (*b*) and (*c*) *infra*. As to unlimited companies, see *Norwich Yarn Co.*, 12 Beav. 366; *Electric Telegraph Co. of Ireland*, 22 Beav. 471; *Professional Building Soc.*, 6 Ch. 856. As to limited companies, see also cases at note (*e*) *supra*, p. 30, and *Langham Skating Rink Co.*, 5 Ch. D. 669.

(*b*) *Baring v. Dix*, 1 Cox, 213; *Jennings v. Baddeley*, 3 K. & J. 78; *Lindley*, 234 (3rd ed.).

(*c*) *Suburban Hotel Co.*, 2 Ch. 737; *Haven Gold Mining Co.*, 20 Ch. D. 151; *German Date Coffee Co.*, 20 Ch. D. 169; *Bristol Joint Stock Bank*, *infra*. See the valu-

able judgment of Lord Cairns in *Suburban Hotel Co.*, *supra*, upon the jurisdiction to order a winding-up under s. 79 (5), when the circumstances do not bring the case within the other sub-sections. See also *Diamond Fuel Co.*, 13 Ch. D. 400.

(*d*) *General Phosphate Corporation*, *supra*.

(*e*) *Wynaad Gorrddu Mining Co.*, 31 W. R. 226.

(*f*) *Red Rock Mining Co.*, 61 L. T. 785.

(*g*) *Bristol Joint Stock Bank*, 44 Ch. D. 703.

(*h*) *Ib.*

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was formed for the purpose of carrying on a banking business in Northamptonshire, but, after about seven months, closed the local bank, changed its name, took an office in London, and carried on a business consisting of speculations in stocks and shares. It was held, on the petition of a shareholder, that it was "just and equitable" that it should be wound up (*a*).

On a shareholder's petition for a compulsory order on the ground that the substratum of the company is gone, the Court disregards a special resolution for voluntary liquidation which owes its existence to the preponderating influence of those whose conduct appears to require such investigation as can only be obtained in a winding-up by the Court (*b*).

Where a company which is carrying on, or can carry on, its proper business, engages in business *ultra vires*, the proper remedy is an injunction to restrain the directors from using the capital of the company in such illegitimate business; but where the company cannot or does not carry on any legitimate business, and engages in business which it has no power to carry on, a shareholder is entitled to a winding-up order (*c*).

As further illustrating the above principles, where there were general words in the memorandum of association extending to the right to work mineral property generally, but the object of the company, or the special object in the memorandum, was to work a particular gold mine, and it turned out that the company had no title to that mine, and no prospect of obtaining possession of it, a winding-up order was made, and the majority of the shareholders were not permitted to bind the minority to go on (*d*). So where the memorandum stated that the object of the company was to work a German patent, but no grant was ever made, and the company purchased a Swedish patent, although the petition was presented within a year from its incorporation, and the circumstances were similar to the preceding case, it was held that the substratum of the company had failed, and that it was "just and equitable" that the company should be wound up (*e*). The following rule has been laid down for

(a) *The Crown Bank*, 44 Ch. D. 634.

(b) *Re The Varieties, Limited* [1893], 2 Ch. 235; *re Gold Co.*, 11 C. D. 701.

(c) *The Crown Bank*, *supra*.

(d) *Haven Gold Mining Co.*, *supra*. See *Anglo-Mexican Mint*

Co., W. N. 1875, p. 168 (a shareholder's petition, where there were assets to be distributed), and *International Cable Co.*, 2 Mez. 183.

(e) *German Date Coffee Co.*, 20 C. D. 169. See the judgment of Kay, J., as to the effect of general words describing the objects of a

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ascertaining what is, in fact, the substratum of a company : where on the face of the memorandum there is a distinct purpose which is the foundation of the company, then, although the memorandum may contain other general words which include the doing of other objects, those general words must be read as being ancillary to that which the memorandum shews to be the main purpose, and if the main purpose fails and fails altogether, then within the language of Lord Cairns in the *Suburban Hotel Company's Case* (a), and within the decision of *Baring v. Dix* (b), the substratum of the association fails (c). Thus, it is not sufficient to prove that the company has done less than they originally intended, if what they have done is strictly in conformity with the memorandum (d). But the Court will not make an order if there is a reasonable chance of the substratum being found to exist, and the majority of the shareholders desire to continue the business (e).

Previously to the 1890 Act, the mere fact of there having been fraud in the promotion of the company, or fraudulent misrepresentation in the prospectus, was not in itself sufficient to induce the Court to make an order, because the majority of the shareholders had power at a general meeting to waive the fraud (f), but it is not so clear that under the new practice the majority can compel the minority of shareholders to forego the statutory right of investigation given by s. 8 of the 1890 Act (g).

Where a company is a mere “bubble company” there is no doubt that the “just and equitable” clause gives the Court power to make a winding-up order (h). When a company is commercially insolvent (i) the company comes within this clause (k), and where the business of the company cannot possibly be resuscitated (l). So, also, where the

company in the memorandum, approved by the C. A. both in respect of the enunciation of the law applicable to these cases, and his lordship's criticisms on the cases. See cases, *ante*, p. 22, under “Suspended business,” where one only of several *substrata* is gone.

(a) L. R. 2 Ch. 737.

(b) 1 Cox, 213.

(c) *German Date Coffee Co.*, *supra*.

(d) *Laughlin Skating Rink Co.*, 5 Ch. D. 669. See *Middlesborough Assembly Rooms Co.*, 14 Ch. D.

101, 109.

(e) *Nylstrom Co.*, 60 L. T. 477.

(f) *Re Ilwaco Gold Mining Co.*, 20 Ch. D. 151; *re Nylstrom Co.*, 60 L. T. 477.

(g) *Re General Phosphate Corporation*, W. N. (1893), p. 142.

(h) *London and County Coal Co.*, 3 Eq. 355; *Anglo-Greek Steam Co.*, 2 Eq. 1.

(i) See *ante*, p. 29.

(k) See cases *supra*, p. 29. See s. 80 (4).

(l) *Diamond Fuel Co.*, 13 Ch. D. 400.

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continuance of the company's undertaking would only lead to the loss of its property (*a*).

The Court will not interfere with a company under this clause on a shareholder's petition except in a very strong case (*b*). It will not do so, where the company is not insolvent as regards creditors, though it may not be able to make a full return to the shareholders of their subscriptions (*c*). An order has been made where there was matter requiring investigation and preponderating influence of a single shareholder (*d*).

So, again, if a reasonable probability be shewn that sums can be recovered from the directors or fraudulent promoters to such an amount as will leave a surplus for division among the shareholders, an order will be made on the petition of a fully paid-up shareholder (*e*).

A winding-up order will not be made under this clause in the following instances:—where the company is doing something which is *ultra vires*, as the shareholder has his proper remedy (*f*); nor on the ground of mismanagement or misconduct of the directors and manager, except, of course, where insolvency is thereby caused (*g*); nor formerly, it would seem, upon the mere fact that there has been fraud in the promotion of the company, or fraudulent misrepresentation in the prospectus, because the majority of the shareholders would have power at a general meeting to waive the fraud (*h*), but it is not so clear that under the new practice the majority can compel the minority of shareholders to forego the statutory right of investigation given by s. 8 of the 1890 Act (*i*). Where the company

(*a*) *Wey, &c., Canal Co.*, 4 Eq. 197; *Bradford Navigation Co.*, 10 Eq. 331. See *Factage Parisien, &c.*, 34 L. J. Ch. 140.

(*b*) *Langham Skating Rink Co.*, *supra*. As to a losing concern, see *supra*. He must allege and prove a substantial benefit will arise from a compulsory order. *Dore Gallery*, W. N. (1891), 98.

(*c*) *London and Metropolitan Counties, &c., Invest. Soc.*, W. N. 1889, p. 18; *Horseshoe Industrial, &c., Co.*, *In re*, 70 L. T. 801.

(*d*) *West Surrey Tanning Co.*, 2 Eq. 737; *Re Varieties Limited* [1893], 2 Ch. 235; see *ante*, p. 32, as to disregarding resolution for voluntary winding-up. See also *Berlin Great Markets Co.*, 19 W. R. 793.

(*e*) *Diamond Fuel Co.*, *supra*.

(*f*) *Ex p. Fox*, 6 Ch. 176, 184, unless the *ultra vires* business carried on by the company is *ultra vires*, when an order will be made, *re Ocean Bank*, 44 C. D. 634; *re Pioneers of Mashonaland* [1893], 1 Ch. 731.

(*g*) *Anglo-Greek Steam Co.*, *supra*; *Anglo-Egyptian Navigation Co.*, 8 Eq. 630; *Bulch & Phipps Co.*, 17 L. T. 235; *Ex p. Wise*, 1 Drew. 465; *Ex p. Imberwick*, 3 De G. & Sm. 231. See also *National Line Stock Ins. Co.*, 26 Beav. 153; *Re Direct London and Manchester Ry. Co.*, 1 De G. & Sm. 731.

(*h*) *Huron Gold Mining Co.*, 20 Ch. D. 151; *Gold Co.*, 11 Ch. D. 701.

(*i*) *Re General Phosphate Corporation*, W. N. (1893), p. 142, *ante*, p. 25.

had only seven shareholders and no debts an order was refused because there was no difficulty in the way of a voluntary winding-up (*a*); but in a similar case it was held that an order could be made (*b*). Where a company has issued shares at a discount a fully paid shareholder is not entitled to an order although the result might be a surplus divisible among shareholders (*c*).

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Discretion of Court.—It should be borne in mind that the Court has a wide discretion under the Act, and when the petition is before it, and even before making a winding-up order (*d*), it may exercise the very useful powers given to it by s. 91 of the Act, which enables the Court to ascertain the views of creditors or contributories by calling a meeting (*e*). By s. 149, the Court has similar powers in the case of a winding-up subject to the supervision of the Court. The Court, in fact, has a complete discretion under the last-mentioned sections as to making a compulsory or a supervision order; and it does not follow that a company will be wound up although grounds for doing so are proved to exist (*f*). The principles upon which the Court will act when the petition is presented by a creditor or a contributory will be found in another chapter (*g*).

After voluntary winding-up (*h*).—A voluntary winding-up is no bar to a compulsory order being made, and the Court has power either to order a compulsory winding-up or to continue the voluntary winding-up under the supervision of the Court.

(1.) The Court may make a compulsory order if it is of

(*a*) *Natal, &c., Co.*, 1 H. & M. 639; *Sea and River Marine Ins. Co.*, 2 Eq. 545; *Strand Hotel Co.*, 10 Sol. Jo. 807.

(*b*) *Sanderson's Patents Assn.*, 12 Eq. 188. See *National Permanent Benefit Building Soc.*, W. N. 1867, p. 225; *Bolton Benefit Soc.*, 12 Ch. D. 679; *Lacey & Co.*, 46 L. J. Ch. 660, where the assets were very small.

(*c*) *Pioneers of Mashonaland Syndicate* [1893], 1 Ch. 731.

(*d*) *Western of Canada Oil Co.*, 17 Eq. 1; *St. Thomas's Dock Co.*, 2 Ch. D. 116; *Uruguay Ry. Co.*, 11 Ch. D. 372, 383; *Great Britain Life Assu. Soc.*, 16 Ch. D. 246; *Chapel House Colliery Co.*, 24 Ch.

D. 259; *Olathe Silver Mining Co.*, 27 Ch. D. 278.

(*e*) See further, *post*, p. 285, as to rules under this section. See *Factage Parisien Cie.*, 34 L. J. Ch. 140 (where the Court of Appeal directed a meeting, and subsequently dismissed the petition).

(*f*) *Metropolitan Saloon Omnibus Co.*, 5 Jur. (N.S.) 922; *Chepstow Bobbin Mills Co.*, W. N. 1887, p. 169. See *Langley Mill Co.*, 12 Eq. 26; *Brighton Hotel Co.*, 6 Eq. 339.

(*g*) See *post*, pp. 45, 50. After a voluntary winding-up, see *infra*.

(*h*) See *post*, Part III., Chap. II., when a supervision order will be made.

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opinion that the rights of *creditors* (a) will be prejudiced by a voluntary winding-up (b), but the onus lies on the creditor to shew this (c); the application must be made before dissolution under s. 143 (d). Sect. 145 applies whether the voluntary winding-up commenced before or after the presentation of the petition (e). In taking this step the Court may adopt the proceedings under the voluntary winding-up (f), but if it does not, the making a compulsory order will not avoid *ab initio* all the proceedings thereunder (g). A judgment creditor, however, may oppose the adoption of the proceedings (h). Where the voluntary winding-up is followed by a compulsory order, the winding-up will be treated as having commenced at the presentation of the petition (i); for the Court cannot, under the section, adopt the resolution to wind up, but only proceedings subsequent to the commencement of the voluntary winding-up.

(2.) When a voluntary winding-up has commenced, the Court may order it to continue, subject to the supervision of the Court, having regard to the wishes of contributories and creditors (k).

The **Official Receiver** is now authorised by s. 14 of the Act of 1890, where a company is being wound up voluntarily or subject to the supervision of the Court, to petition for a compulsory order (l).

(a) See *post*, p. 391.

(b) S. 145. See generally as to a voluntary winding-up, *post*, p. 401. As to delay in presenting the petition, see *Anglo-Californian, &c., Mining Co.*, 10 W. R. 309; *Gold Co.*, 11 Ch. D. 701, 714. As to an action commenced against a company under a voluntary winding-up, see *Leandes v. Garbutt Mining Co.*, 2 J. & H. 282.

(c) *New York Exchange, Ltd.*, 39 C. D. 415; *Russell Cordner & Co.* [1891], 3 Ch. 171.

(d) See *post*, p. 644. *Pinto Silver Mining Co.*, 8 Ch. D. 273; *London and Caledonian Insu. Co.*, 11 Ch. D. 140.

(e) *New York Exchange, Ltd.*, 39 Ch. D. 415; *West Cumberland Iron, &c., Co.*, 40 Ch. D. 361.

(f) Sect. 146, *Hertfordshire Brewery Co.*, 43 L. J. Ch. 358. As to the jurisdiction to adopt the

proceedings in the voluntary winding-up by resolutions after the Act of 1862, of a company not registered under the Act of 1862, but formed and registered under the Act of 1856, see formerly *Minima Organ Co.*, 8 L. T. 409; but see now *London India Rubber Co.*, 1 Ch. 329.

(g) *Thames v. Patent Linoleum Co.*, 17 Ch. D. 250. See *Crow v. Financial Corp.*, 15 Eq. 363, 380.

(h) *Cumberland Block Lead Mining Co.*, 6 L. T. 197.

(i) *Taurine Co.*, 25 Ch. D. 118. Cotton, L. J., *dissentiente*, being of opinion that the date of the resolution was the commencement. See *New York Exchange, Ltd.*, *supra*. See *West Cumberland Iron, &c., Co.*, *supra*.

(k) As to which see *post*, Part III. Chap. II. See ss. 147-149.

(l) See s. 14, *post*, p. 285.

The Court has jurisdiction to make a compulsory order though a supervision order has already been made, but there are few cases in which the Court would exercise such jurisdiction (a). And a petition of this description by a creditor on the ground of the misconduct of the liquidators was refused; an application in such a case should have been made to change the liquidators (b).

The Court has entire discretion under the provisions of the Act in deciding whether an order for winding-up by the Court, or subject to its supervision, shall be made; but the Court will, under any circumstances, first consider whether the case be such as to require a compulsory order in order to put in force any provisions of the Act which would not be available under a voluntary winding-up. For instance, a probable case of the assets having been improperly dealt with between the presentation of the petition and a resolution to wind-up would be sufficient (c). It has been generally considered that the Court will continue a voluntary winding-up already commenced under supervision in preference to making a compulsory order (d); but in *In re Western District Bank* (e), Jessel, M.R., said that, in his Lordship's experience, where there was a large liquidation, a compulsory order was cheaper and better than a supervision order, for in the former case the liquidator might take all necessary steps under s. 96 of the Act, without creating the expense of applying to the Court in every instance, and the Court could thus exercise some control over the costs; whereas in the latter case there was nothing to prevent the liquidator from coming to the Court as often as he pleased and running up costs by endless summonses. Supervision orders have, however, in practice been generally made; and the Court will in all these cases look at the facts (f). In making such orders

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(a) *Orrell Colliery Co.*, W. N. 1879, p. 106; *Patent Floor Cloth Co.*, 8 Eq. 664. See *Manchester Economic Building Soc.*, 24 Ch. D. 488 as to rehearing a petition on which supervision order has been made.

(b) *London and Mediterranean Bank*, 15 L. T. 153.

(c) *New York Exchange, Ltd.*, 39 Ch. D. 415.

(d) See *Chepstow Bobbin Mills Co.*, 36 Ch. D. 563; *Inns of Court Hotel Co.*, W. N. 1866, p. 348; *United Merthyr Collieries Co.*, 16

L. T. N. S. 170; *London and Mediterranean Bank*, 15 L. T. 153; *Gen. International Agency*, 36 Beav. 1; and cases below.

(e) W. N. 1879, p. 151. But see *West Cumberland Iron, &c., Co.*, 40 Ch. D. 361, where North, J., thought a supervision order less expensive; see report in W. N. 1889, p. 2. See *Barned's Banking Co.*, 14 W. R. 722.

(f) *New York Exchange, Ltd.*, *supra*; *West Cumberland Iron, &c., Co.*, *supra*; *Re Land Securities Co.*, 42 W. R. 624.

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the Court has jurisdiction by placing restrictions on a voluntary liquidator or dispensing with restrictions on a liquidator almost to turn a winding-up under supervision into a winding-up by the Court, and a winding-up by the Court into a winding-up under supervision, and thus adapt its order to the exigencies of each case (*a*).

Whenever a supervision order is required, it is generally advisable that the petition should ask for a compulsory order, and in the alternative for a supervision order (*b*).

The general grounds upon which a winding-up order by the Court will be preferred to a voluntary winding-up have been already stated, and the main points are as follows: where there have been transactions requiring investigation (*c*), but the transactions must be connected with the promotion or formation of the company, not mere dealings with members of the outside public (*d*); where it may be doubtful whether the property of the shareholders will answer the liabilities; where there is danger to the creditors of the shareholders escaping from their liabilities (*e*); where a threat of an action is made subsequent to, and outside, the voluntary winding-up (*f*); or where the control of the company is in the hands of a managing director and his immediate family, and the debenture-holders are under the same control, and their nominee is

(*a*) *Re Watson & Sons, Ltd.* [1891], 2 Ch. 55, where a supervision order was made and a committee of inspection appointed. *Civil Service Brewery Co.*, W. N. (1893), p. 5, supervision order with direction that no costs to be paid without taxation; *re Pittichord, Oller & Co.*, W. N. (1893), p. 153, supervision order with direction that liquidator should make a monthly report in writing to the Registrar in Companies Winding-up as to progress of liquidation; *re Land Securities Co.*, 42 W. R. 624, supervision order, the liquidator undertaking to make an investigation and report whether an examination of officers of the company was required, liberty for any creditor or contributory to apply for examination under s. 115 of the Act of 1862. In future, when making a supervision order, Vaughan Williams, J., will always order that no costs or

remuneration be allowed to the liquidator without taxation, *re Waterport Materials Co.*, W. N. (1893), p. 48. See form of order now in use, *post*, p. 407.

(*b*) See *post*, Part II., p. 326.

(*c*) *Krysapolsky Restaurant* [1892], 3 Ch. 175; *Re Vapettes* [1893], 2 Ch. 235; *Russell, Graham & Co.* [1891], 3 Ch. 171; *National Indebtedness and Assets Corp.* [1891], 2 Ch. 505.

(*d*) *Re McLeod Battery Co.* [1894], 1 Ch. 444.

(*e*) *Northumberland, &c., Banking Co.*, 2 De G. & J., 357, 378, *per* Turner, L. J. See also *British Alliance Corp.*, 2 Ch. D. 635; *United Service Co.*, L. R. 7 Eq. 76; *Littlehampton Steam Co.*, 34 L. J. Ch. 237; *Barnes's Banking Co.*, 14 W. R. 722; *The Varieties, Ltd.*, *In re* [1893], 2 Ch. 235.

(*f*) *Zeehouw Co.*, 53 L. J. Ch. 465, *post*, p. 423.

voluntary liquidator and receiver in a debenture-holder's action (a).

Directly a creditor shews the Court that his interests will be prejudiced by a voluntary winding-up, but not, however, before, he will, in general (b), be entitled *ex debito justitiæ* to a winding-up by the Court (c). As where there has been considerable delay, without any satisfactory reason, in the proceedings under the voluntary winding-up (d), or it appears that the voluntary liquidator is acting in the interest of the shareholders to the detriment of the creditors (e), or is distributing the assets in a manner which is inequitable and unfair to the petitioner (f). So also where it was shewn that a suspicious bill of sale to one of the directors had been registered (g). If, however, the creditors desire to support a voluntary winding-up, the inclination of the Court will be in favour of it (h).

A claimant for unliquidated damages is not a creditor under s. 147, so as to entitle him to present a petition for a supervision order (i). Although creditors asked for a compulsory order, a supervision order has been made (k); and this will generally be done at the wish of the majority of creditors, unless it is shewn that it would do an injustice to the petitioning creditor (l). So, a compulsory order has been changed into a supervision order by the wish of a majority of the creditors (m). For the rights of creditors under s. 145 are subject to the power given to the Court under s. 147 (n). But where a creditor only asked for a supervision order, the Court declined to make a compulsory order upon the application of a majority of the

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(a) *Re Medical Battery Co.* [1894], 1 Ch. 444.

(b) But see *ante*, p. 25.

(c) *Rotherham Alum Co.*, W. N. 1882, p. 182; *New York Exchange, Ltd.*, 39 Ch. D. 415; *Russell Cordner & Co.* [1891], 3 Ch. 171; *National Debenture Co.* [1891], 2 Ch. 505.

(d) *Manchester, Queensland, &c., Co.*, 15 W. R. 1070; *Tramway Wheel, &c., Co.*, W. N. 1873, p. 160. But see *Oriental Commercial Bank*, 15 L. T. 8.

(e) *Tramway Wheel, &c., Co.*, *supra*.

(f) *Caerphilly Colliery Co.*, 32 L. T. 15.

(g) *London and Provincial Starch Co. Ex p. Adams*, 16

L. T. 474. See *W. Surrey Tanning Co.*, *ante*, p. 34.

(h) *Lonsdale, &c., Ironstone Co.*, 16 W. R. 601; *re New Oriental Bank* [1892], 3 Ch. 563.

(i) *Pen-y-Van Colliery Co.*, 6 Ch. D. 477. See *Oriental Commercial Bank*, 15 L. T. 8.

(k) *Owen's Patent Wheel Co.*, 29 L. T. 672; *Rotherham Alum Co.*, *supra*; *re New Oriental Bank* [1892], 3 Ch. 563. See *post*, p. 423.

(l) *West Hartlepool Co.*, 10 Ch. 618.

(m) *Oriental Commercial Bank*, *supra*. See *Gen. International Agency*, 36 Beav. 1, as to reasons for making a supervision order.

(n) *Simon's Reef Mining Co.*, 31 W. R. 238.

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creditors (*a*). And where a petition for a supervision order is amended by praying in the alternative for a compulsory order, the petition must be re-advertised (*b*).

It has been urged that, as s. 145 omits any reference to contributories, the maxim *expressio unius est exclusio alterius* applies (*c*). There are, however, several cases, notwithstanding the language of the Act, shewing that the Court, under exceptional circumstances, and where there is sufficient reason, may make a compulsory order on a contributory's petition (*d*). The following reasons have been considered sufficient:—a delay of five years and unsatisfactory conduct of the proceedings (*e*); an evident want of proper supervision in the voluntary winding-up (*f*); conflict between the parties, matters requiring investigation and overwhelming influence on the part of a single director (*g*); and in a recent case, that the special resolution for voluntary liquidation owed its existence to the preponderating influence of those whose conduct appeared to require such investigation as could only be obtained in a winding-up by the Court (*h*). The petition in *West Surrey Tanning Co.* (*g*) was presented in the interval between the first resolution for winding-up and the meeting at which that resolution was confirmed, and therefore the Court obtained jurisdiction over the case before there had been any complete voluntary winding-up. In *re Gold Co.* (*i*) the petition for a compulsory order was not presented for nine months after the commencement of the voluntary winding-up, and *re West Surrey Tanning Co.* (*g*) was distinguished by Baggallay, L.J., on that ground.

The Court has power, however, to direct a winding-up subject to supervision on a contributory's application after the commencement of a voluntary winding-up; but the grounds for testing when a compulsory order will be made are applicable to a petition for a supervision order under that section, and no such order can, under ordinary

(*a*) *Chepstowe Bobbin Mills Co.*, 36 Ch. D. 563.

(*b*) *National Whole Meal Bread Co.* [1891], 2 Ch. 151; and see *post*, p. 328, as to re-advertisement generally.

(*c*) *Re Bank of Gibraltar*, L. R. 1 Ch. 69. See *per* Turner, L. J. *ib.* 74.

(*d*) *Gold Co.*, 11 Ch. D. 701; *London, &c., Discount Co.*, 1 Eq. 277.

(*e*) *Re Fire Annihilator Co.*, 32

Beav. 561, decided under 19 & 20 Vict. c. 47, s. 105, a similar section.

(*f*) *Re Littlehuntington, &c., Steam Co.*, 34 Beav. 256. See also *Imperial Bank of China and Japan*, 1 Ch. 339.

(*g*) *West Surrey Tanning Co.*, 2 Eq. 737.

(*h*) *Re The Varieties, Ltd.* [1893], 2 Ch. 255.

(*i*) 11 C. D. 701.

circumstances, be obtained on the petition of contributories, although the Court in exercising its discretion will have regard to the wishes of creditors or contributories (a). The Court is unwilling to interfere with shareholders where the company is being wound up voluntarily, and in order to induce it to make a supervision order, the contributory must shew that there has been fraud, or that a dissentient minority have been inequitably overpowered by improper influence (b). The mere fact that there are charges of misconduct on the part of the liquidators or directors is not alone sufficient ground for an order continuing the voluntary winding-up under supervision (c), because a contributory has his remedy in a voluntary winding-up by applying to the Court under s. 138, or at any rate by bringing into force the summary power given by s. 10 of the Act of 1890 (d), where there is a clear and distinct charge (e).

Where an old company was wound up voluntarily for the purpose of forming a new company of the same name, the liquidator, upon threat of action against the old company, having petitioned the Court to continue the voluntary winding-up of the old company under supervision, was held entitled to the protection of the Court under ss. 87 and 151 of the Act of 1862, as s. 138 did not apply to the threat of an action made subsequent to, and outside, the voluntary winding-up (f).

There is a difficulty in the way of making a compulsory order after a voluntary winding-up from the fact that there is a different period for the commencement of the winding-up; for the latter dates from the passing of the first resolution, but the former from the time when the petition is presented, and this is an inconvenience which will not be

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(a) Sect. 149. *Owen's Patent Wheel Co.*, 29 L. T. 672; *Beaujoulais Wine Co.*, 3 Ch. 15; *Ex p. Fox*, 6 Ch. 176; *Ex p. Wragge*, 37 L. J. Ch. 220; *Trowbridge Water Co.*, 18 L. T. 115.

(b) *Langham Skating Rink Co.*, 5 Ch. D. 669, 685; *London, &c., Discount Co.*, 1 Eq. 277; *Bank of Gibraltar*, 1 Ch. 69; *Imperial Bank of China and Japan*, 1 Ch. 339; *St. David's Gold Mining Co.*, 14 W. R. 755; *Oriental Commercial Bank*, 15 L. T. 8; *Beaujoulais Wine Co.*, *supra*; *Ex p. Fox*, *supra*; *Imperial Merc. Credit Ass.*, W. N.

1866, p. 257; *Madras Coffee Co.*, 17 W. R. 643.

(c) *Star and Garter Hotel*, 42 L. J. Ch. 374; *London and Mediterranean Bank*, 15 L. T. 153; *Yorkshire Fibre Co.*, 9 Eq. 650; *London Bank of Scotland*, 15 W. R. 1103; *Imperial Bank of China*, *supra*.

(d) Formerly s. 165 of the Act of 1862, now repealed by the above Act.

(e) See p. 207.

(f) *Zoedone Co.*, 53 L. J. Ch. 465.

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unnecessarily incurred (*a*). And it has been held that if a voluntary winding-up is superseded by a compulsory order, the winding-up is to be treated as having commenced at the presentation of the petition (*b*). In the case of a voluntary winding-up continued under supervision, this difficulty does not arise, as the date of the passing of the resolution is deemed to be the commencement of the winding-up (*c*).

The Court has no power to make a supervision order in the case of a voluntary winding-up if the resolution for some cause has not been properly passed, and is invalid (*d*); the proper course for a contributory under such circumstances is to take steps that another meeting be called (*e*).

Unregistered company.—The grounds upon which unregistered companies may be wound up are, with some variations, similar to those already mentioned with reference to companies formed under the Act. The provisions with respect to a company being wound up where a special resolution has been passed, or where the members are reduced to less than seven, are entirely omitted from the section, as they are not applicable to unregistered companies, but a new term is added providing for their dissolution. Such companies cannot under the Act be wound up voluntarily or subject to the supervision of the Court. A compulsory order may be obtained under the following circumstances (*f*):—

- (1.) Whenever the company is dissolved (*g*), or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs (*h*);
- (2.) Whenever the company is unable to pay its debts;
- (3.) Whenever the Court is of opinion that it is just and equitable that the company should be wound up.

(*a*) *Gold Co.*, 11 Ch. D. 701, 718;
Colonial Trusts Corp., Ex p. Bradshaw, 15 Ch. D. 465; *Thomas v. Patent Lionite Co.*, 17 Ch. D. 250;
West Cumberland Iron, &c., Co., 40 Ch. D. 361. See *post*, pp. 77, 144.

(*b*) *Taurine Co.*, 25 Ch. D. 118; *post*, pp. 77, 144.

(*c*) S. 130, *Weston's Case*, 4 Ch. 20; *Dry Dock Co. of London*, 39 Ch. D. 306 (where the petition was before the resolution). See *Taurine Co.*, *supra*.

(*d*) *Bridport Old Brewery Co.*,

2 Ch. 191.

(*e*) *London Flour Co.*, 19 L. T. 136.

(*f*) See s. 199.

(*g*) The dissolution, if the unregistered company is incorporated, must take place by virtue of a clause in its Act or other instrument of incorporation, or if not incorporated, by virtue of a clause in its deed of settlement.

(*h*) See *Family Endowment Soc.*, 5 Ch. 118.

The provisions as to when an unregistered company is to be deemed, for the purposes of the Act, unable to pay its debts, correspond with those of s. 80, but they provide for the case of an action against a member, which would not be applicable to a company registered under the Act. They are shortly as follows:—

- (1.) Whenever a creditor for more than £50 has served on the company a demand, and they have neglected for three weeks to pay or compound for it (a).
- (2.) Whenever any legal proceeding has been instituted against a member for a debt, and a written notice has been given to the company, and they have neglected for ten days after service of such notice to pay or compound for the debt, or to get the action stayed, or to indemnify the defendant.
- (3.) Whenever, in England or Ireland, execution has issued against the company, or against any person as a member, or as a nominal defendant on its behalf, and is returned unsatisfied;
- (4.) Whenever, in the case of the Stannaries, there has been a decree against the effects of the company, in a creditor's suit in the Vice-Warden's Court;
- (5.) Whenever, in Scotland, the *inducie* of a charge for payment on an extract decree, &c., have expired without payment being made.
- (6.) Whenever it is otherwise proved to the satisfaction of the Court that the company is unable to pay its debts.

A petition may be presented in the case of an **unregistered railway company** when there has been a warrant for the abandonment of the railway (b).

A contributory may petition the Court for the winding-up of an unregistered company (c).

Striking off Register.—By s. 7 of the Companies Act, 1880, the Registrar of Joint Stock Companies has power, after the provisions of that Act have been complied with, and the necessary notices given, to strike the name of any company off the register which he has reasonable cause to think has ceased to carry on business, and on notice of this being published in the Gazette, such company is dissolved.

(a) The demand must have been served by leaving it at the company's principal place of business, or by delivering it to the secretary or some director or principal officer,

or in such other way as the Court may approve or direct.

(b) 32 & 33 Vict. c. 114, s. 4.

(c) *Re South Staffordshire Tramways Co.*, 8 R. 288.

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AN application to the Court for a winding-up order, whether by the Court or subject to the supervision of the Court, is by petition (*a*). This application may be made by—

1. The company ;
2. One or more creditors ;
3. One or more of its contributories ;
4. The holder of a policy under the Life Assurance Companies Act, 1870 (*b*) ;
5. All or any of the above parties together ;
6. The Official Receiver ;

and every order made on any petition operates in favour of all the creditors and all the contributories of the company in the same manner as if it had been made upon the joint petition of a creditor and a contributory (*a*).

The above applications will now be separately dealt with.

1. Company's petition.—A petition may be presented by the company, that is to say, by a majority of directors acting within their powers (*c*) ; but it is seldom advisable that the company should be the petitioner. If a friendly petition is presented by a creditor, the petitioner's solicitor should not be the solicitor to the company, otherwise the

(*a*) SS. 82 and 148. See *post*, Part II., as to the practice on the petition.

(*b*) 33 & 34 Vict. c. 61, ss. 2, 21 ; 35 & 36 Vict. c. 41, s. 6.

(*c*) See *Harben v. Phillips*, 23 Ch. D. 14, as to the power of a general meeting to prevent the directors using the company's name.

carriage of the order may be given to another creditor, and the petitioner's costs disallowed (*a*).

A petition may be presented by the liquidator in the company's name in a proper case (*b*).

The liquidator is entitled to a supervision order, so as to obtain the benefit of s. 151 of the Act of 1862 (*c*).

2. Creditor's petition.—The circumstances under which an order will be made on a creditor's petition are different to those upon which the Court will act when a contributory makes the application (*d*). The evidence which a petitioning creditor must adduce depends on the amount of his debt.

There must be a debt (*e*). The debt need not amount to £50 (*f*) if he proves that the company is unable to pay its debts by some other evidence than non-payment after the statutory demand (*g*). If there are assets which may be made available by a winding-up (*h*), a creditor is generally entitled to an order as a matter of course when he has a valid debt established or not disputed, and it is shewn that the company is unable to pay its debts within the meaning of the statute (*i*). But to entitle a person to present a petition there must be a debt which can be enforced against the company, either at law or in equity (*k*).

But *ex debito justitiae* applies only as between the creditor and the company, for the Court, exercising the powers which are vested in it by the Act, will have regard to the wishes of a majority of creditors in deciding whether a compulsory order (*l*) or a supervision

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(*a*) *Lennox Publishing Co.*, 61 L. T. 787.

(*b*) S. 95.

(*c*) *Zoedone Co.*, 53 L. J. Ch. 465.

(*d*) See *ante*, p. 39, *seq.* Where the petition is presented after a voluntary winding-up, see *ante*, p. 35.

(*e*) *South Wales Atlantic Steamship Co.*, 2 Ch. D. 763.

(*f*) See s. 80, and *ante*, pp. 24, 28, 43.

(*g*) *London and Birmingham Alkali Co.*, 1 De G. F. & J. 257, where a judgment debt for less than £50, followed by unsatisfied execution, was held sufficient. See *Paris Skating Rink Co.*, 5 Ch. D. 959. Costs of a petition founded on a debt under £50 will not generally be

allowed.

(*h*) *Chapel House Colliery Co.*, 24 Ch. D. at p. 269. See *Olathe Silver Mining Co.*, 27 Ch. D. 278 (enquiry directed as to assets in chambers); *The Company or Fraternity of Free Fishermen of Faversham*, 36 Ch. D. 329; in Court below, 56 L. T. 422. See *Burnett v. Oregonian Ry. Co.*, 11 C. of S. Cas. 912 (Sc.) (order refused as neither necessary nor desirable).

(*i*) *Bowes v. Hope, &c., Co.*, 11, II. L. C. 389; *Princess of Reuss v. Bos*, L. R. 5 H. L. 176; *London Suburban Bank*, 6 Ch. 641; *Western of Canada Oil Co.*, 17 Eq. 1.

(*k*) *Law Courts Chambers Co.*, 61 L. T. 669; *re W. Powell & Sons*, W. N. (1892), p. 94.

(*l*) *Uruguay Ry. Co.*, 11 Ch. D.

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order (*a*) should be made, or whether an order should be refused (*b*). But where a creditor only asked for a supervisory order, the Court declined to make a compulsory order upon the application of a majority of the creditors (*c*). In determining whether regard should be paid to the wishes of creditors who oppose the making of a winding-up order, the Court ought to consider not only the number of the creditors and the amount of their debts, but also the reasons which they assign for their conclusion (*d*). Where, after a voluntary winding-up, the opposing creditors stood by and made no sign until the actual hearing of the petition, when they came forward and opposed, the dismissal of the petition was without costs (*e*).

This right, however, of an unpaid creditor to a winding-up order *ex debito justitiæ* is also subject to other exceptions where there are special circumstances; as, for instance, where it appears that the petitioning creditor will not be in a better position by obtaining a winding-up order (*f*); where there are no assets that can be obtained by a winding-up order at all (*g*); where the winding-up order would be useless (*h*); where the object of the petitioner is to put pressure only on the company (*i*) or to obtain an advantage in payment over the other creditors (*k*); where it is desired to question the management or conduct of

372; *West Hartlepool Co.*, 10 Ch. 618; *Horbury Bridge Coal Co.*, W. N. 1879, p. 51; *St. Thomas's Dock Co.*, 2 Ch. D. 116; *re Russell, Cordner, & Co.*, [1891], 3 Ch. 171. See also *General Rolling Stock Co.*, 34 Beav. 314 (large number of creditors desired voluntary winding-up, but compulsory order made).

(*a*) *West Hartlepool Co.*, *supra*; *re New Oriental Bank* [1892], 3 Ch. 563. See *ante*, p. 39.

(*b*) *Urquhart Ry. Co.*, *supra*; *Olathe Silver Mining Co.*, *supra*; *Great Western Forest of Dean Coal, &c., Co.*, 21 Ch. D. 769; *Chapel House Colliery Co.*, 24 Ch. D. 259; *re Krasnapolsky Restaurant, &c., Co.*, [1892], 3 Ch. 174; *re Edgbaston Brewery*, 68 L. T. 341; *Langley Mill Steel Co.*, 12 Eq. 26; *Universal Drug Ass.*, 22 W. R. 675.

(*c*) *Chepstow Bobbin Mills Co.*, 36 Ch. D. 563.

(*d*) *Great Western Forest of Dean Coal, &c., Co.*, *supra*.

(*e*) *Horbury Bridge Coal Co.*, *supra*. See also, as to delay in expressing their wishes, *Oriental Commercial Bank*, 15 L. T. 8.

(*f*) *Urquhart Ry. Co.*, *supra*; *Chapel House Colliery Co.*, *supra*.

(*g*) *St. Thomas's Dock Co.*, 2 Ch. D. 116, 119; *Chapel House Colliery Co.*, *supra*; *Olathe Silver Mining Co.*, *supra*; *The Company or Fraternity of Free Fishermen of Faversham*, *supra*. But see *Lacey & Co.*, 46 L. J. Ch. 660; *re Krasnapolsky, &c., Co.*, [1892], 3 Ch. 174; *re Edgbaston Brewery Co.*, 68 L. T. 341.

(*h*) *The Company or Fraternity of Free Fishermen of Faversham*, *supra*.

(*i*) *London and Paris Banking Co.*, 19 Eq. 444.

(*k*) *Planet Benefit Building Soc.*, 14 Eq. 441.

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directors and managers, no insolvency having been caused thereby (a); where the debt is *bonâ fide* disputed; or when the Court thinks it a proper case in which to exercise its discretion (b).

The Court has given time to a company to enable it to make some arrangement for payment of its creditors where it seemed sufficiently clear that such an arrangement could be effected (c); but this indulgence has been refused in other cases (d).

Although the Court may also exercise its discretion (e) upon the application of a majority of shareholders, yet such an application, particularly where the assets are small (f), will not be of much avail in influencing the Court to withhold the relief to which a creditor is entitled in order to secure the assets of a company clearly insolvent; nor will the opposition of the company. But where the assets are small the Court might make a supervision order, instead of a compulsory order, if the creditors could not be prejudiced by such a course (g).

In future, when the debt is small, no winding-up order will be made, or if made will be without costs (h).

The vendors of land taken by a company under its compulsory powers are not, until their title has been duly made out and accepted, creditors of the company for the unpaid purchase-money so as to entitle them to petition for a winding-up order (i).

The Apportionment Act, 1870, does not alter the date at which rent becomes due; and a person is not entitled to petition as creditor in respect of rent not yet due (k).

A surety who has not been called upon to pay anything on behalf of the company is not a creditor (l). A surety can stand in no higher or better position than his principal (m).

(a) See *Anglo-Greek Steam Co.*, 2 Eq. 1.

(b) *St. Thomas's Dock Co.*, *supra*.
Langley Mill Steel Co., *supra*. See
Burnett v. Oregonian Ry. Co., 11
C. of S. Cas. 912 (Sc.).

(c) *Brighton Hotel Co.*, 6 Eq.
339; *Western of Canada Oil Co.*,
17 Eq. 1; *Great Western Coal Co.*,
21 Ch. D. 769. See also *City and*
County Bank, 10 Ch. 470.

(d) *Home Assce. Ass.*, 12 Eq.
112; *International Contract Co.*,
14 L. T. 726.

(e) *St. Thomas's Dock Co.*, *supra*.

(f) *Isle of Wight Ferry Co.*, 2
H. & M. 597.

(g) *New York Exchange, Ltd.*, 39
Ch. D. 415.

(h) *Re Herbert Standring & Co.*,
W. N. (1895), p. 99.

(i) *Milford Docks Co.*, 23 Ch.
D. 292.

(k) *United Club and Hotel Co.*,
60 L. T. 665.

(l) *Vron Colliery Co.*, 20 Ch. D.
442.

(m) *Law Courts Chambers Co.*,
61 L. T. 669.

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A person who has obtained a garnishee order absolute against a company as garnishee, is not thereby constituted a creditor of the company (*a*).

The holder of a bill of exchange which has not matured at the date of filing the petition is not a "creditor," even if the company gives him notice that the bill will not be met when due (*b*); but dishonour of the company's acceptance in the hands of the petitioner is enough, and is proof that the company is unable to pay its debts (*c*).

A person who has advanced money to a company which is not entitled to borrow is not a creditor (*d*).

A claimant for unliquidated damages is not a creditor so as to entitle him to present a petition (*e*). Nor is a person claiming a debt of uncertain nature (*f*).

Where the petitioning creditor has so encumbered his debt as to make it doubtful what amount of interest he possesses, the Court will not readily interfere. A party has no *locus standi* to petition when he has accepted another person as his debtor in place of the company (*g*).

So where the petitioner's debt had been attached, the petition was dismissed (*h*).

The assignee of a debt may, it seems, present a petition (*i*); but after a winding-up petition has been presented, the sale of the debt and the right to proceed with the petition will not be permitted (*k*).

The executor of a creditor of a company is entitled to present a winding-up petition before he has obtained probate; it is sufficient if he has obtained probate before the hearing of the petition (*l*).

Where a creditor, having presented a petition, was paid part of his debt, but did not receive the balance on the day fixed, and proceeded with his petition, and a winding-up

(*a*) *Combined Weighing Machine Co.*, 43 Ch. D. 99.

(*b*) *Re W. Powell & Sons*, W. N. (1892), p. 94.

(*c*) *Re Globe New Patent Iron Co.*, 20 Eq. 337.

(*d*) *National, &c., Building Soc.*, 5 Ch. 309.

(*e*) *Pen-y-Van Colliery Co.*, 6 Ch. D. 477. See *Oriental Commercial Bank*, 15 L. T. 8.

(*f*) *European Banking Co.*, 2 Eq. 521.

(*g*) *Times Life Ass. Co.*, 5 Ch. 381.

(*h*) *European Banking Co.*, 2

Eq. 521.

(*i*) See s. 25 (6) of the Judicature Act, 1873. See also *London, &c., Alkali Co.*, 1 De G. F. & J. 257; *Osoregan Gold Mining Co.*, 29 Sol. J. 204; *Paris Skating Rink Co.*, 5 Ch. D. 959, and s. 80 (1) of Act of 1862, p. 633. As to assignee of judgment debt in bankruptcy, see *Ex p. Blunsell*, 17 Q. B. D. 303.

(*k*) *Paris Skating Rink Co.*, *supra*.

(*l*) *Masnie and General Life Assce. Co.*, 32 Ch. D. 373.

order was made upon that and another petition, the creditor was compelled to repay the money so received by him (a). The above rule, however, was not adhered to in a case where the payment was made on the morning of the day after the publication of the advertisement in the *Gazette* (b).

A debt due from a company under an agreement between it and its voluntary liquidators and another person is sufficient to support a petition by that person for a compulsory order (c). It has been decided that such a debt will not support a petition for a supervision order (d).

Where the petitioner had agreed to refer all matters in difference to arbitration, and the arbitrator had made his award, but it had not been taken up, it was held that the petitioner was not barred from obtaining a winding-up order (e).

It seems that when a company is admittedly insolvent, a shareholder cannot stop a creditor's petition to wind up by paying off the petitioner's claim (f).

Secured Creditor.—A secured creditor may present a petition without forfeiting the benefit of his security, and the winding-up is equally good whether it is obtained by a secured creditor or an unsecured creditor (g).

Debentures.—Where a company covenants to pay the registered holder (h), or the bearer (i) of a debenture, the money thereby secured, such holder or bearer can, when the money is due, present a petition, and provided the debentures contain such a covenant as above mentioned, the fact that there is also a trust deed in the ordinary form makes no difference (k). So, too, the deposit by

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(a) *Ex p. Greenwood*, 9 Ch. 511.

(b) *National Banks Case* (Eur. Arb.), L. T. 92. See *post*, p. 242, as to notice.

(c) *Re Bank of South Australia* (2) [1895], 1 Ch. 578.

(d) *Re Bank of South Australia* (1) [1894], 3 Ch. 722, *sed quare*, see remarks of Lord Halsbury and Lindley, L.J., in *re Bank of South Australia* (2), *supra*.

(e) *Lancaster and Newcastle-upon-Tyne Ry. Co.*, 5 Rail. & Can. Cases, 632.

(f) *Pavy's Fabric Co.*, 24 W. R. 91.

(g) *Moor v. Anglo-Italian Bank*, E.W.

10 Ch. D. 681, 689; s. 10, Judicature Act, 1875; *Great Western Coal, &c., Co.*, 21 Ch. D. 769.

(h) *Chapel House Colliery Co.*, 24 C. D. 259. See s. 2 of Joint Stock Companies Arrangement Act, 1870; and *Slater v. Darlston Steel Co.*, W. N. 1877, p. 139, as to debenture-holders being "creditors" within that section.

(i) *Western of Canada Oil Co.*, 17 Eq. 1; *St. Thomas's Dock Co.*, 28 C. D. 117; *Olathe Silver Mining Co.*, 27 C. D. 278.

(k) *Olathe Silver Mining Co.*, *supra*.

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way of mortgage of bearer debentures can present a petition (a). But where the covenant in the debentures to pay the money thereby secured is not entered into by the company with the bearer at all, but is a covenant with the trustees of the covering deed that the company would pay the bearer of the debenture, so that there is no direct debt from the company to the holder of a debenture, and it is manifestly intended that the money should be recovered in the manner expressed in the trust deed and in no other, the holder of such a document is not "a creditor" of the company entitled to present a petition (b). A winding-up order will not be made on the petition of debenture-holders if no benefit can be derived from an order (c).

3. Contributory's petition.—The Act has, by s. 129(2), given shareholders an absolute power of saying by a majority of three-fourths whether the company shall go on or not, and the Court will be reluctant to interfere with the exercise of this power. If, therefore, a contributory presents a petition, the Court is not only guided by the principles already expounded in the case of a creditor's petition in considering whether the company is brought within one of the statutory provisions under which a winding-up order may be made, but also by the wishes of the majority of the shareholders, in accordance with the same discretion entrusted to the Court in applications by contributories as in those by creditors. It will inquire whether an order would be in the interests of the shareholders in general. A shareholder may, therefore, find it a very difficult matter to obtain an order if the company opposes, and the creditors do not press for one (d).

In the case of a petition by an alleged contributory, he must, it seems, admit that he is a contributory in respect of one or more shares (e).

With the object of preventing petitions by persons who have purchased shares for the purpose of obtaining winding-up orders, it is provided (f) that no contributory shall be

(a) *Oatthe Silver Mining Co.*,
supra.

(b) *Uruguay, &c., Ry. Co.*, 11
C. D. 372.

(c) *Royal Courts of Justice
Chambers Co.*, 4 T. L. R. 517.

(d) *Metropolitan Saloon Omni-
bus Co.*, 28 L. J. Ch. 830; *London
Suburban Bank*, 6 Ch. 641; *Euro-*

pean Life Ass. Soc., 9 Eq. 122;
Suburban Hotel Co., 2 Ch. 737;
Planet Building Soc., 14 Eq. 441;
Middlesboro' Assembly Rooms Co.,
14 Ch. D. 104.

(e) *Continental Bank*, 16 L. T.
112; *Times Fire Ass. Co.*, 30 Beav.
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(f) See s. 40 of the Act of 1867.

capable of presenting a petition, unless the members are reduced to less than seven; or unless his shares were originally allotted to him, or have been held by him, and registered in his name, or in that of his wife (*a*), or any trustee for him or her, for at least six months during the eighteen months previously to the presentation of the petition, or have devolved upon him through the death of a former holder. But the word "held" has no technical meaning, and merely means that the name of the contributory has been on the register as the holder of shares during the requisite time (*b*); or ought to have been on the register but for the default of the company (*c*). And where a trustee in liquidation was appointed during the period of six months, a contributory was held entitled to present a petition (*d*).

Unless the substratum of a limited company or main purpose be gone, or there be proof of fraud, or other circumstances shewing to the satisfaction of the Court that a company should be put an end to, as that some evident injustice to members can only be remedied by a winding-up order, the Court will refuse to make an order if the majority of the members desire to continue the business, and assert that this may be done with a reasonable chance of success (*e*); or there is a prospect of carrying out an arrangement for paying the debts (*f*). So also where the shareholder has but a small interest, and the majority oppose (*g*); or if the petition is not *bonâ fide* (*h*); the Court will decline to interfere. But where the threat of an action was made subsequent to, and outside the voluntary winding-up, a supervision order was made so as to obtain

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(*a*) See ss. 6, 7 of the Married Women's Property Act, 1882.

(*b*) *Wala Wynaad Mining Co.*, 21 Ch. D. 849. See this case, and *Positive Government Ass. Co.*, W. N. 1877, p. 23, as to a share warrant holder.

(*c*) *Patent Steam Engine Co.*, 8 Ch. D. 464.

(*d*) *Wala Wynaad Mining Co.*, *supra*.

(*e*) See *Professional Building Soc.*, 6 Ch. 856; *City and County Bank*, 10 Ch. 470; *Factage Parisien*, 34 L. J. Ch. 140. See also *European Ass. Soc.*, 9 Eq. 122; *Planet Building Soc.*, 14 Eq. 441, 450.

(*f*) *City and County Bank*,

supra.

(*g*) *London Suburban Bank*, 6 Ch. 641; *Irrigation Co. of France*, 6 Ch. 176; *Langham Skating Rink Co.*, 5 Ch. D. 669. See *Patent Artificial Stone Co.*, 34 Beav. 185 (where order refused though company in debt); *Lancashire Brick Co.*, 34 Beav. 330 (where order refused to fully paid-up shareholders, as no case made shewing necessity to enforce contribution from other shareholders who had not paid in full). See *London and Metropolitan Counties, &c., Invest. Soc.*, W. N. 1889, p. 18.

(*h*) *Metropolitan Saloon Omnibus Co.*, 28 L. J. Ch. 830.

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the benefit of s. 151 of the Act of 1862, notwithstanding that the petition was opposed by a majority of the shareholders (*a*). If, however, the Court thinks that an order should be made but that the petition is not *bona fide*, it may give the carriage of the order to a shareholder other than the petitioner (*b*).

If the Court is unable to form a satisfactory opinion as to the proper course to take, and thinks that further inquiries in order to ascertain the views of contributories will enable it to come to a correct conclusion, it may allow time for a meeting for that purpose. But a second meeting will not be directed if the contributories have already expressed their wishes at a meeting which was not altogether regular (*c*). And if no grounds for a winding-up are shewn, the Court has no power to direct a meeting under any circumstances (*d*).

The authorities lay down the rule that when the number of shareholders is small and there are no debts, the Court, in the absence of exceptional circumstances, will not put the expensive machinery of the Winding-up Acts in force at the instance of a contributory (*e*). But where there are matters to be investigated, or the question is whether the company shall be wound up or not, and the Court thinks it ought to be stopped, a compulsory order will be made although there are only a few shareholders (*f*). So also where there is a preponderating influence on the part of a single shareholder (*g*); or the aid of the Court is necessary to make a final disposition of the assets (*h*); or there has been fraud (*i*).

A fully paid-up shareholder in a limited company is entitled to petition for a winding-up, as he is a "contributory" (*k*); but he must both allege in his petition and

(*a*) *Zoedone Co.*, 53 L. J. Ch. 465.

(*b*) *Berlin Great Market Co.*, 24 L. T. 773.

(*c*) See *Imperial Mercantile, &c., Ass.*, W. N. 1886, p. 257; *Oriental Commercial Bank*, W. N. 1886, p. 283.

(*d*) *Joint Stock Coal Co.*, 8 Eq. 146; *Langham Skating Rink Co.*, 5 Ch. D. 669.

(*e*) *Natal Co.*, 1 H. & M. 639; *Sea and River Ins. Co.*, 2 Eq. 545; *Strand Hotel Co.*, 10 Sol. Jo. 807.

(*f*) *Sanderson's Patent Ass.*, 12 Eq. 188; *West Surrey Tanning*

Co., 2 Eq. 757; *Lambton and County Coal Co.*, 3 Eq. 355. See *National Permanent Benefit Building Soc.*, W. N. 1867, p. 225; *Bolton Benefit Soc.*, 12 Ch. D. 673.

(*g*) *West Surrey Tanning Co.*, *supra*; *re The Varieties, Ltd.* [1893], 2 Ch. 235.

(*h*) *Anglo-Mexican Mint Co.*, W. N. 1875, p. 168.

(*i*) *New Gas Generator Co.*, 4 Ch. D. 874. See *Rica Gold Washing Co.*, 11 Ch. D. 36.

(*k*) S. 74; *National Savings Bank*, 1 Ch. 547; *Anglosea Colliery Co.*, *ib.* 555.

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shew by evidence that there are assets of the company of such an amount that in the event of a winding-up he would have a tangible share of surplus to receive; for he is not liable to contribute anything towards the assets of the company, and if he has any interest at all, it must be that after full payment of all the debts and liabilities of the company there will remain a surplus divisible among the shareholders of sufficient value to authorize him to present a petition (*a*). But if this allegation is not inserted in the petition, it might be amended by joining a creditor as a co-petitioner (*b*).

A petition by a fully paid-up shareholder was refused, though the company was heavily in debt, and made very small profits, as it was not supported by any other shareholder or creditor (*c*). It has been held that the holder of fully paid-up shares in a solvent company may be entitled to a winding-up order, where other shareholders have not paid in full, upon shewing a proper case, in order to enforce contribution (*d*); but the fact that shares in a limited company have been issued at a discount is not a ground for making a winding-up order on the petition of a fully paid shareholder—even where, if the amounts unpaid on the shares were called up, there would be a surplus to be divided among the members of the company (*e*).

Probably a petition by a fully paid-up shareholder can be maintained where the company has no assets except moneys to be recovered by rescinding fraudulent transactions (*f*).

In considering which of two shareholders who have presented petitions for winding-up a company (which did not appear to be insolvent) shall have the conduct of the order, a fully paid-up shareholder has been preferred to one who had only paid a deposit (*g*).

Except in a case of fraud, or where the creditors support

(*a*) *Rica Gold Washing Co.*, 11 Ch. D. 36, where see the judgment of Jessel, M.R., at p. 42; 40 L. T. 531; *Diamond Fuel Co.*, 13 Ch. D. 400; *Vron Colliery Co.*, 20 Ch. D. 442; *New Zealand Quartz Crushing Co.*, W. N. 1873, p. 174. See also *Tumacaori Mining Co.*, 17 Eq. 534; *Patent Bread Machinery Co.*, 14 L. T. 582; *Irrigation Co. of France*, 6 Ch. 176. As to a shareholder's petition not being allowed to be converted into a creditor's petition, see *Spence's*

Cement Co., 9 Eq. 9.

(*b*) *Vron Colliery Co.*, 20 Ch. D. at p. 447.

(*c*) *Patent Artificial Stone Co.*, *supra*.

(*d*) *Lancashire Brick Co.*, 34 Beav. 330.

(*e*) *Pioneers of Mashonaland Co.* [1893], 1 Ch. 737.

(*f*) *Rica Gold Washing Co.*, *supra*.

(*g*) *Constantinople Hotels Co.*, 13 W. R. 851.

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the petition, a fully paid-up shareholder will not be entitled to a compulsory or a supervision order if the company is in voluntary liquidation (*a*).

It will be no objection to a petition by shareholders that their names are not on the register at the time of presentation, if the company have failed to obey a decree ordering them to register such persons as shareholders (*b*).

The fact that a shareholder is in arrear with calls is not an absolute bar to his petitioning where the circumstances are exceptional, or when he has made a tender of the amount due. He could pay the call into Court (*c*), and as a general rule the Court will not hear the petition until the calls have been paid (*d*).

The holder of scrip certificates, if he admits himself to be a contributory and undertakes to do all acts necessary to make himself a shareholder, may present a petition for winding-up (*e*); and so, also, if there are surplus assets which he has a right to have distributed (*f*).

As to holders of shares in companies where the articles allow the issue of shares transferable by delivery, see the case below (*g*).

The executors of deceased members, though not members themselves, have been held entitled to present a petition as contributories (*h*).

Past members who have ceased to be members within a year before the commencement of the winding-up (*i*), usually called B contributories, could, it appears certain, under exceptional circumstances, apply for a winding-up order (*h*). And an order of this description was made in a case of past members under the old Acts (*l*).

4. Holder of a life assurance policy.—We have already

(*a*) *Gold Co.*, 11 Ch. D. 701;
Rica Gold Washing Co., *supra*.

(*b*) *Patent Steam Engine Co.*,
8 Ch. D. 404.

(*c*) *Diamond Fuel Co.*, 13 Ch.
D. 400, 406.

(*d*) *Re Crystal Reef Gold
Mining Co.* [1892], 1 Ch. 408.

(*e*) *Littlehampton Steam Co.*, 34
Beav. 256; *Ex p. Copper*, 3 De
G. & S. 1; *Worford, &c., Ry. Co.*,
3 De G. & S. 116.

(*f*) *Lindley*, 627 (5th ed.).

(*g*) *Princess of Reuss v. Ios*, L. R.
5 H. L. 176. See this case as to
the illegality of making shares not
fully paid-up transferable by de-

livery. See *Grissonell's Case*, 4
De G. & J. 244; *McEwen v. West
London Woollens Co.*, 6 Ch. 655;
Morton's Case, 16 Eq. 194. As
to a share warrant, see *Positive
Government Ass. Co.*, W. N. 1877,
p. 23.

(*h*) *Narwick Yarn Co.*, 12 Beav.
366. See *Masonic and Gen. Life
Asses. Co.*, 32 Ch. D. 373, as to
their ability to do so before obtain-
ing probate.

(*i*) See *post*, p. 144, and s. 38 (1).

(*k*) See s. 40 of Act of 1867.

(*l*) *Times Fire Ins. Co.*, 30 Beav.
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pointed out when a winding-up order will be made on the petition of a policy-holder or shareholder in the case of a life assurance company (*a*). By s. 2 of the Act of 1870 a policy-holder is defined as being "the person who for the time being is the legal holder of the policy for securing the life assurance, endowment, annuity, or other contract with the company." Sect. 4 of the Life Assurance Companies Act, 1872, contains further provisions with respect to life assurance companies, which have amalgamated with another in course of being wound up. Where, under the policies of an assurance company, the policy-holders might on depositing their policies receive the cash value thereof, it was held by the Court of Appeal that the petitioners who had so deposited their policies could not apply as creditors but only as policy-holders; and the usual fiat was struck out, and a reference to the Judge was directed (*b*).

5. All or any of the above parties together.—This fifth head will require no further comment.

6. Official Receiver.—As to the new power given to the Official Receiver under s. 14 of the Act of 1890 to apply for a winding-up by the Court where there is a winding-up voluntarily or under supervision, see *post*, p. 285.

Death of petitioner.—The legal personal representative of a petitioner, who dies after the advertisement has been inserted, may by leave continue and carry on the petition (*c*). Where a winding-up order was made, and it afterwards appeared that the petitioner died before the date of such order, an order for revivor discharging that order was made, and then a fresh winding-up order; and further advertisements were dispensed with (*d*).

Building society.—The subject of building societies, and the circumstances under which a member of such a society may present a petition, have already been referred to (*e*).

(*a*) See *ante*, p. 16. See s. 21 of the Life Assurance Companies Act, 1870. As to an unregistered mutual life assurance society, see *Great Britain, &c., Soc.*, 16 Ch. D. 246, *ante*, p. 17.

(*b*) *British Imperial Assce. Co.*, W. N. 1875, p. 184. See *British Alliance Corp.*, 9 C. D. 635.

(*c*) *Dynevor Collieries Co.*, W. N. 1878, p. 199. See R. S. C. 1883, O. 17, as to change of parties by death.

(*d*) *Commercial Bank of London*, W. N. 1888, pp. 214, 234. See *Atkin's Estate*, 1 Ch. D. 82; *Macenzie v. Gear*, 4 Ch. 2, n.

(*e*) See *ante*, p. 13, *seq.* See

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Company incorporated for public purposes.—An unregistered company incorporated by Special Act can be wound up on the petition of shareholders (*a*), creditors (*b*), or of the company (*c*), even although it may be necessary to apply for an Act of Parliament to enable the property of the company to be sold (*d*). But where in the Act incorporating the company it is stated that the construction of the works is of public advantage, the Court will be reluctant to make a winding-up order, unless it is shown that there is no other process by which its difficulties can be overcome (*e*).

It has been held by Malins, V.C. (*f*), that debenture-holders of an unregistered company incorporated by Special Act, who are empowered by the Act to enforce the payment of principal and interest by the appointment of a receiver, cannot until a receiver is actually appointed, and he has failed to obtain payment, obtain a winding-up order. And the same judge has held that, even when a receiver has been appointed, and no payment has resulted therefrom, debenture-holders are not entitled to a winding-up order, on the ground that a receiver was their only remedy (*g*); this decision, however, has been recently dissented from, and was not followed by Stirling, J. (*h*). It should be observed, however, that in the latter case the debenture-holder had obtained not only a receiver, but also a judgment by which it was declared that the debenture-holders were entitled to stand in the position of judgment creditors.

The Court will order the winding-up of a registered company, in which powers for the public benefit have been conferred by provisional order of the Board of Trade confirmed by Special Act, although it may not be possible to sell the undertaking without authority of Parliament (*i*).

Planet, &c., Benefit Building Soc., 14 Eq. 441; *Queen's Benefit Building Soc.*, 6 Ch. 815; *Jones or Andrew v. Swansea, &c., Soc.*, 50 L. J. Q. B. 428.

(*a*) *Re Wey and Arun Canal Co.*, 4 Eq. 197.

(*b*) *Re Brentford and Isleworth Tramways*, 26 C. D. 527.

(*c*) *Re Bradford Navigation*, 10 Eq. 331.

(*d*) *Re Bradford Navigation*, *supra*; *re Barton-on-Humber Water Co.*, *infra*.

(*e*) *Re Exmouth Docks*, 17 Eq.

181; *re Froo Fishermen of Faversham*, 36 C. D. 329; but see *re South London Fish Market*, 39 C. D. 324; *re Barton-on-Humber Water Co.*, 42 C. D. 585; *re Portsmouth Tramways Co.* [1892], 2 Ch. 362.

(*f*) *Re Exmouth Docks*, *supra*.

(*g*) *Re Herne Bay Waterworks*, 10 C. D. 42.

(*h*) *Re Portsmouth Tramways Co.*, *supra*.

(*i*) *Re Barton-on-Humber Water Co.*, *supra* (a shareholder's petition).

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Malicious presentation of petition.—It should here be observed that an action will lie, without proof of pecuniary loss or special damage, for falsely and maliciously, and without reasonable or probable cause, presenting a petition to wind up a trading company: for the presentation of the petition is, from its very nature, calculated to injure the credit of the company (*a*). But “extra costs” are not damage of which the law will take notice, inasmuch as they are not necessarily incurred for the purposes of the litigation (*b*).

Where a petition to wind up is improperly filed, the Court has jurisdiction on motion, to restrain the advertisement of the petition and stay all proceedings under it, or to dismiss it (*c*).

Application of company's funds.—Notwithstanding a proviso in the articles of association with respect to “legal proceedings on behalf of the company,” the Court will restrain the application by directors of the company's assets in paying the costs of a petition presented by themselves, but opposed by a number of shareholders and a minority of the directors, as an act illegal and *ultra vires* (*d*).

(*a*) *Quartz Hill Mining Co. v. Eyre*, 11 Q. B. D. 674. As to the questions to be left to the jury, see same case, 50 L. T. 274.

(*b*) *Ib.*

(*c*) *Gold Hill Mines*, 23 C. D. 210; *ex parte Advance Boiler Co.* (reported as “*re a Company*”)

[1894], 2 Ch. 349. See *ante*, p. 27.

(*d*) *Smith v. Duke of Manchester*, 24 Ch. D. 611. As to the application of the company's funds in an action or prosecution by the directors, see *Studdert v. Grosvenor*, 33 Ch. D. 528.

CHAPTER V.

ACTIONS, EXECUTION, DISTRESS, &c., AFTER COMMENCEMENT OF WINDING-UP.

What actions may be continued or restrained.
Execution, &c., and distress.
Rates, taxes, &c.

The Crown.
Companies not formed under the Act.
Practice on applications to restrain.
Costs under ss. 85, 87, 163.

Chap. V. What actions may be continued or restrained.—Under s. 85 of the Act of 1862 the Court may at any time after the presentation of the petition, and *before* any winding-up order is made, upon the application of the company, or any creditor or contributory, restrain further proceedings in any action or proceeding against the company (*a*). And under s. 87, *after* a winding-up order, no action or other proceeding can be continued or commenced against the company either in England, Scotland, or Ireland (*b*), except with the leave of the Court (*c*), and subject to such terms as that Court may impose (*d*). So, when an order has been made for winding up a company under supervision, in England, the Court will, *ex parte*, restrain actions pending in any part of the United Kingdom against the company (*e*).

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Proceedings in an action will not be stayed upon the application of a **third party**, who is a co-defendant, because leave to proceed has not been obtained (*f*).

Quasi-criminal proceedings can be restrained, as, for

(*a*) See *post*, p. 62, as to s. 85. This section applies to an unregistered company, *Rudow v. Great Britain, &c., Assee. Co.*, 17 C. D. 600.

(*b*) See s. 122. *International Pulp Co.*, 3 Ch. D. 594; Scotch action stayed in *Ex p. Australian Investment Co. re Queensland Mercantile Agency Co.*, 58 L. T. 578; and also *Hermann Looy, Id.*, 36 Ch. D. 502. As to an action in

California, see *California Redwood Co. v. Walker*, 13 C. of S. Cas. (Sc.) 810.

(*c*) See *Wilson v. Natal Investment Co.*, 36 L. J. Ch. 312.

(*d*) S. 87. See s. 163. *Traders' North Staffordshire Co.*, 19 Eq. 60.

(*e*) *Middlesborough Fire Brick Co.*, 52 L. T. 98.

(*f*) *Wells v. Estates Investment Co.*, 15 W. R. 762.

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instance, proceedings which are being taken against the company by a common informer before a police magistrate to recover penalties (*a*). So, also, proceedings by an overseer of the poor before magistrates for poor-rates (*b*).

But a **Board of Trade inquiry**, under the powers of the Tramways Act, 1870, to ascertain the solvency of the promoters, is not a proceeding against the company, and cannot be restrained under s. 87 (*c*).

An order of the Court of Session in Scotland restraining further proceedings in actions raised in the San Francisco Court by Englishmen, registered shareholders of the company, may be made an order of the Chancery Division (*d*). The Court has power under s. 87 to restrain a British subject from taking proceedings in a foreign Court against a company in liquidation (*e*).

Where, prior to the commencement of the winding-up, a creditor has arrested property of the company in Scotland *jurisdictionis fundande causâ*, and has followed this up by bringing an action in Scotland and making an arrestment on the dependence of the action, he has become, subject to his obtaining a decree in such action, a secured creditor, and will not be restrained from continuing his action (*f*).

If the arrestments are impeached on the ground that they were obtained on a misstatement of facts, the English Winding-up Court will nevertheless treat the process as having been validly issued (*g*).

It is a general rule that leave to continue or commence an action will only be given where there are circumstances which cannot be satisfactorily determined in the winding-up, and which render an action necessary (*h*). To the last-mentioned rule an exception is made in the case of actions against third persons together with the company as a necessary party, when leave to proceed may be given, but an undertaking will be required from the plaintiff not to

(*a*) *Briton Medical, &c., Assce. Assoc.*, 32 Ch. D. 503.

(*b*) *Flint Coal and Cannel Co.*, 56 L. J. Ch. 232.

(*c*) *Pontypridd, &c., Tramways Co.*, 58 L. J. Ch. 536.

(*d*) *Scottish Pacific Coast Mining Co.*, W. N. 1886, p. 63. See *California Redwood Co. v. Walker*, 13 C. of S. Cas. (Sc.) 810. See also *City of Glasgow Bank*, 14 Ch. D. 628; *Hollyford Copper Mining Co.*, 5 Ch. 93.

(*e*) *North Carolina Estate Co.*, 5 T. L. R. 328; and see *Fluck's*

Case [1894], 1 Ch. 369, where the creditor was ordered to remove an embargo on Brazilian Assets of the Company.

(*f*) *West Cumberland Iron Co.* [1893], 1 Ch. 713; see also as to Scotch actions, *Queensland Mercantile and Agency Co.*, 61 L. J. Ch. 48.

(*g*) *Ibid.*

(*h*) *Keynsham Co.*, 33 Beav. 123; *Wilson v. Natal Investment Co.*, 36 L. J. Ch. 312; *Life Ass. of England*, 34 L. J. Ch. 64; *Poole Firebrick Co.*, 17 Eq. 268.

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issue execution against the company without the leave of the Court (*a*). So, the balance of convenience may make it advisable to allow the action to go on until the defence is delivered, but no further (*b*).

Leave has been given to institute or proceed with actions having reference to the following matters, and the particular circumstances of each case must be considered:—

Account of promotion money (*c*).

Admiralty, lien against ship (*d*).

Bills of exchange (*e*).

Ejectment (*f*).

Injunction against amalgamation (*g*).

Lien of vendor, to enforce (*h*).

Shares, rescission of contract for (*i*).

Specific performance (*k*).

Trespass (*l*).

An application to stay proceedings in an action is generally made ex parte, but in some cases the Court may desire to hear the other side. Such applications are made to the Court where such proceedings are pending (m).

The application for leave to commence an action against a company should not be ex parte (n). It should be made to the judge in whose Court the winding-up proceedings are pending (o); it seems by summons at chambers (p); although it has frequently been made upon motion (q).

(*a*) *McEwen v. London and Bombay, &c., Bank*, 15 L. T. 495; *Marine Investment Co.*, 17 L. T. 535 (an action to restrain amalgamation, two companies being defendants). *Hayell v. Currie*, *infra*. *United English Ins. Co.*, 5 Eq. 300; *Wells v. Estates Investment Co.*, *supra*.

(*b*) *Thames Plate Glass Co.*, v. *Land and Sea Telegraph Co.*, 6 Ch. 643.

(*c*) *McEwen v. London and Bombay, &c., Bank*, *supra*.

(*d*) *Rio Grande do Sul Steam Co.*, 5 Ch. D. 282; *Australian Navigation Co.*, 20 Eq. 325.

(*e*) *Ex p. Bateman, re Contract Corp.*, 15 L. T. 495.

(*f*) *Strand Hotel Co.*, W. N. 1868, p. 2.

(*g*) *Marine Investment Co.*, 17 L. T. 535.

(*h*) *Blakeley v. Dent*, 15 W. R. 663.

(*i*) *Hall v. Old Talargoch, &c.*, Co., 3 Ch. D. 749. See *Stone v. City*

and County Bank, 3 C. P. D. 282; *Houlerson v. Lucas*, 5 Eq. 249.

(*l*) *Marshall v. Glanmorgan Iron Co.*, 7 Eq. 129. See *Thames Plate Glass Co. v. Land and Sea Telegraph Co.*, 11 Eq. 248; *ib.* 6 Ch. 643.

(*o*) *Wyley v. Exhall Coal Co.*, 33 Beav. 538; *Joseph Povey & Co.*, W. N. 1873, p. 127 (diverting water).

(*m*) *General Service Co-operative Stores* [1891], 1 Ch. 496.

(*n*) *Western and Brazilian Telegraph Co. v. Biddy*, 42 L. T. 821; *Belfast, &c., Brewery Co.*, 7 Ir. R. Eq. 441. As to an *ex parte* motion formerly, see *Williams v. Bristol Marine Ins. Co.*, 39 L. J. Ch. 504.

(*o*) *Rio Grande do Sul Steam Co.*, 5 Ch. D. 282.

(*p*) *Hayell v. Currie*, W. N. 1867, p. 75. As to affidavit, see *St. Outibert Lead Smelting Co.*, W. N. 1866, p. 154.

(*q*) See the cases, *supra*.

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An application for leave to proceed with an action must be made to the judge who has the conduct of the winding-up (a).

The Court of Appeal will not interfere with the discretion of the Court below when it has given leave to continue an action (b): but when it has refused leave, there are cases where the Court of Appeal has granted it (c).

In an action by a liquidator for a debt, the defendant may set off a claim for unliquidated damages, and may without leave of the Court in the winding-up raise that defence by counter-claim (d).

A mortgagee, or a mortgage-debenture-holder, is an independent person, and his rights to realize his property will not be interfered with because the company is being wound up; he will, therefore, have leave to proceed with his action to realize his security, except under special circumstances, or unless the same relief is given to him in the winding-up as he would obtain in the action (e). Sometimes, however, the mortgagee makes an application for liberty to sell.

But if the mortgagee has filed a winding-up petition, he will be restrained from exercising his power of sale under the mortgage until the hearing of the petition (f). A person having an equitable charge only on the "funds, assets, and effects" of the company in priority to others will not be permitted to continue a foreclosure action (g).

An order in a winding-up directing inquiries as to priorities of incumbrancers raises no equity to prevent an action for foreclosure being brought by persons claiming to be first mortgagees, in whose presence the order had been made, and who had obtained an order to attend the proceedings and to have their costs made costs in the winding-up; but leave to bring the action was given on the

(a) *Wilson v. Natal Investment Co.*, 36 L. J. Ch. 312 (before the Jud. Act). And see *Thames Plate Glass Co. v. Land and Sea Telegraph Co.*, 6 Ch. 643.

(b) *Thames Plate Glass Co. v. Land and Sea Telegraph Co.*, 6 Ch. 643.

(c) *Strand Hotel Co.*, W. N. 1868, p. 2; *McEwen v. London and Bombay, &c., Bank*, *supra*; *St. Cuthbert Lead Smelting Co.*, 35 Beav. 384.

(d) *Mersey Steel Co. v. Naylor & Co.*, 9 Q. B. D. 648; affirmed by H. L. 9 App. Cas. 434. See

Asphaltic Wood Pavement Co., Lee & Chapman's Case, 30 Ch. D. 216. See *Lion Life Assce. Co. v. Atkinson*, W. N. 1855, pp. 54, 78.

(e) *Joshua Stubbs, Ltd.* [1891], 1 Ch. 475. *Re David Lloyd & Co.*, 6 Ch. D. 339; *Longdendale Cotton Spinning Co.*, 8 Ch. D. 150; *Moor v. Anglo-Italian Bank*, 10 Ch. D. 681.

(f) *Cambrian Mining Co., Ex. p. Fell*, 29 W. R. 881.

(g) *Jones v. Swansea Cambrian Benefit Building Soc.*, 50 L. J. Q. B. 428.

Chap. V. terms that, notwithstanding the latter order, the costs of attending the proceedings should be in the discretion of the Court (*a*).

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An action and a winding-up cannot be consolidated (*b*).

After a winding-up order, the only persons who can be authorized by the Court to institute proceedings in the name of the company are the creditors and contributories, because they are the persons who, under the terms of the Act, can intervene if they are advised that the liquidator does not properly do his duty (*c*). Vaughan Williams, J., objects to the practice of **Official Receivers** allowing their names to be used in proceedings by other persons simply on such persons giving an indemnity. The name of the Official Receiver should not be allowed to be used except in a clear case, and he should not rely merely on an opinion of counsel obtained by the persons moving him (*d*).

Where an action, continued by leave against a company, is dismissed for want of prosecution, the plaintiff is not debarred from establishing his claim in the same matter in the winding-up (*e*).

There is no jurisdiction, under s. 87, to stay actions against the directors of a company being wound up by the Court (*f*).

Execution, &c., and distress.—In the first place, if an execution creditor has actually obtained his money before the winding-up order is made, the Court will not interfere with him (*g*). And where execution is issued *bona fide*, and the sheriff is actually in possession, or would have been in possession but for resistance made to the sheriff's officer (*h*), before the presentation of the petition, the creditor will not be restrained from reaping the benefit of his judgment (*i*); unless, perhaps, where a forced sale would be ruinously detrimental to the company without any corresponding advantage to the creditor (*h*); or where

(*a*) *Hamilton's Windsor Iron Co.*, 27 W. R. 827.

(*b*) *Lowatt v. Oxfordshire Ironstone Co.*, 30 Sol. J. 338; R. S. C., O. 49, r. 8.

(*c*) *Cape Breton Co. v. Fenn*, 17 Ch. D. 198.

(*d*) *Anglo-Sardinian Antimony Co.*, W. N. (1894), p. 156; practice note W. N. (1894), p. 166; and see *post*, Part II., p. 268.

(*e*) *Orrell Colliery, &c., Co.*, 12 Ch. D. 681.

(*f*) *Re New Zealand Banking Corp.*, 39 L. J. Ch. 128.

(*g*) *Ex p. Hawkins, United English and Scottish Insur. Co.*, 3 Ch. 787.

(*h*) *London Cotton Co.*, 2 Eq. 53. See also *Bastour & Co.*, 4 Eq. 681.

(*i*) *Great Ship Co.*, 4 De G. J. & S. 63. See *Withernsea Brickworks*, 16 Ch. D. 37.

(*k*) *Hill Pottery Co.*, 1 Eq. 649; *Phos-ph-Mhaugs Coal Co.*, 4 Eq. 689; *Railway Steel Co.*, 8 Ch. D. 183.

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there are other special circumstances. It would seem, however, that a sale by a sheriff under a writ of *fi. fa.* is a "proceeding" under s. 87, and it is competent for the Court to restrain the creditor from selling after a winding-up order (a); which would be done in a strong case, and where there is reason to doubt the *bona fides* of the creditor (a).

Whether the execution was issued after the presentation of the petition, or has been issued before, if the sheriff has not taken possession until after the presentation of the petition, the case is the same, and the exercise of the discretionary power of the Court will involve similar considerations (b). It appears to be the duty of the Court, in considering whether it will exercise its discretion in granting an injunction, to see what would be its duty, or might probably be its duty, if there had actually been a winding-up order, and an application had been made to the Court by the creditor for leave to issue execution (c). Where the sheriff is not in possession at the commencement of the winding-up, the Court will, except under some special circumstances, restrain an execution creditor (d). Creditors have been put upon terms in regard to the description of property to be taken in execution (e).

When the sheriffs, before the presentation of a winding-up petition, entered the premises and took possession of the chattels of a company, and after the commencement of the winding-up received moneys paid by the public for admission to the premises, it was held that the execution was, as to these moneys, put in force after the commencement of the winding-up, and was void under s. 163 (f).

There are decisions that the Court will not allow a creditor, who has been induced by a company to give them an indulgence by forbearing to proceed to judgment or execution, to lose the benefit which he would have obtained

(a) *Perkins, Beach, &c., Co.*, 7 Ch. D. 371. See *Silver Hill Mining Co.*, 27 Sol. J. 615, and cases in preceding note. But see *Artistic Colour Printing Co.*, 14 Ch. D. 502.

(b) *Vron Colliery Co.*, 20 Ch. D. 442, 446.

(c) *Great Ship Co.*, 4 De G. J. & S., per Turner, L.J., p. 69.

(d) *Great Ship Co.*, 4 De G. J. & S. 63; *London Cotton Co.*, 2 Eq. 53; *Dublin Exhibition Palace Co.*, Ir. R. 2 Eq. 158; *Bastow & Co.*,

4 Eq. 681; *Imperial Steam Co.*, 37 L. J. Ch. 517; *London & Devon Biscuit Co.*, 12 Eq. 190 (writ in sheriff's hands but possession not taken); *Dimson's Fire Clay Co.*, 19 Eq. 202; *Railway Steel, &c., Co.*, 8 Ch. D. 183; *Richards & Co.*, 11 Ch. D. 676.

(e) *Bastow & Co.*, *supra*.

(f) *Opera (Limited)*, 62 L. T. 859. See same case on other points [1891], 3 Ch. 261.

Chap. V. by active prosecution of his claim (*a*). But the creditor must have given time in the sense of binding himself not to sue; for the mere abstaining from bringing an action is not sufficient (*a*). These decisions, however, have been doubted, though not actually overruled by the Court of Appeal (*b*). Where the position of the plaintiff has been so changed by the action of the company that it would not be just to allow the company to restrain proceedings, the Court may not interfere; and leave was given where the company allowed an order to be made without raising objections (*c*).

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In some cases, notwithstanding the execution was before the commencement of the winding-up, a sale has been restrained, the Court directing the liquidator to hold the proceeds, after selling the property, in the first place for the benefit of the execution creditor; which substantially put him in the same place as if the sheriff had effected the sale for him (*d*). But these cases were not followed in, and appear to be impliedly overruled by, the case of *Milwood Colliery Co.* (*e*).

So, also, a creditor who has obtained a **garnishee order**, attaching money in the hands of one of the company's debtors, before presentation of the petition, and who obtains an order for payment before the winding-up order, is not a "trustee" within the meaning of the 100th section of the Act of 1862 (*f*). But the judgment creditor does not obtain any charge on the debts until service of the order *nisi* on the garnishees (*g*).

S. 87 of the Bankruptcy Act, 1869 (*h*), which deprived execution creditors for more than £50 of the fruits of the execution where the sheriff had notice of a bankruptcy

(*a*) *Vron Colliery Co.*, *supra*.

(*b*) See *per* Jessel, M.R., in *Vron Colliery Co.*, *supra*, at p. 448, in which case *Railway Steel, &c., Co.*, 8 Ch. D. 183, and *Richards & Co.*, 11 Ch. D. 676, were doubted.

(*c*) *Rudow v. Great Britain, &c., Assee. Soc.*, 17 Ch. D. 600.

(*d*) *Hill Pottery Co.*, 1 Eq. 649; *Plas-yn-Mhowys Coal Co.*, 4 Eq. 689; *Richards & Co.*, *supra*. See *Railway Steel, &c., Co.*, 8 Ch. D. 183; *Dublin Exhibition Palace Co.*, *supra*.

(*e*) 24 W. R. 898. See *Vron Colliery Co.*, *supra*.

(*f*) *Ex p. Hawkins, United*

English and Scottish Insce. Co., 3 Ch. 787. See s. 100. As to attaching calls or money in the hands of a liquidator, see *Ex p. Turvey*, 2 De G. F. & J. 354; *Mack v. Ward*, W. N. 1884, p. 16.

(*g*) *Stanhope Silkstone Collieries Co.*, 11 Ch. D. 160. See also *Humar v. Giles*, 11 Ch. D. 942, and *United English and Scottish Insce. Co.*, 5 Eq. 300, where the judgment creditors obtained leave to bring an action.

(*h*) See the corresponding s. 46, par. 2 of the Bankruptcy Act, 1883, 46 & 47 Vict. c. 52, to which the same decision applies.

within fourteen days after sale, was not made applicable to the winding-up of companies by s. 10 of the Judicature Act, 1875 (a).

Sometimes it is found to be advisable to **pay out an execution** which has been duly levied before the commencement of the winding-up. *In this case, the provisional liquidator will make an application to the Court, which will be served on the parties to the action, &c., asking that he may be at liberty to pay to the execution creditor, the amount of principal, interest, and costs, including sheriffs' fees, in full, and the costs of the application, such costs being out of the assets of the company (b).*

In order that equality may be the rule in the administration of the assets of a company, any attachment, sequestration, distress, or execution, put in force by the entry of the sheriff (c), against the company after the commencement of the winding-up is void, by virtue of s. 163 of the Act of 1862, where the company is being wound up by the Court or subject to the supervision of the Court, unless the Court, upon the application of the creditor seeking to issue execution, has exercised its discretionary power, and given leave to proceed (d); for the 163rd section of the Act of 1862 is qualified by the 87th (e). But it is extremely

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(a) *Withernsea Brickworks, &c.*, 16 Ch. D. 337, overruling *Printing, &c., Registering Co.*, 8 Ch. D. 535; and approving *Richards & Co.*, *supra*. See also *Railway Steel, &c., Co.*, *supra*; *Coal Consumers Ass.*, 4 Ch. D. 625; *Albion Steel, &c., Co.*, 7 Ch. D. 547. The section is as follows: "... in the winding-up of any company under the Companies Acts, 1862 and 1867, whose assets may prove to be insufficient for the payment of its debts and liabilities and the costs of winding-up, the same rules shall prevail and be observed as to the respective rights of secured and unsecured creditors, and as to debts and liabilities provable, and as to the valuation of annuities and future and contingent liabilities respectively, as may be in force for the time being under the law of bankruptcy with respect to the estates of persons adjudged bankrupt; and all persons who in any such case would be entitled to prove for and receive dividends out

of the estate of any such deceased person, or out of the assets of any such company, may come in under the decree or order for the administration of such estate, or under the winding-up of such company, and make such claims against the same as they may respectively be entitled to by virtue of this Act."

(b) See form of such order, *post*, p. 536.

(c) *London and Devon Biscuit Co.*, 12 Eq. 190.

(d) By virtue of ss. 85, 87; see also *ante*, p. 62. See *Great Ship Co.*, 4 De G. J. & S. 63; *Exhall Mining Co.*, 4 De G. J. & S. 377; *London Cotton Co.*, 2 Eq. 53; *Bastow & Co.*, 4 Eq. 681; *Dimson's Estate Fire Clay Co.*, 19 Eq. 202. But see also the remarks of Jessel, M.R., in *Universal Disinfectors Co.*, 20 Eq. 162; *Vron Colliery*, 20 Ch. D. 442.

(e) *Ib.* See also *Ex p. Levick*, 5 Eq. 69; *Lancashire Cotton Spinning Co.*, *Ex p. Carnelley*, 35 Ch. D. 656; *Dry Docks Corp. of London*, 39 Ch. D. 306.

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doubtful, where execution has not been issued previously to the winding-up order by a creditor of the company at the time of such order, whether leave in any case would be given to issue or levy execution (*a*). See also as to entering up judgment after a winding-up order, the case below (*b*). Sect. 163 does not itself apply to a voluntary winding-up, but the Court has, nevertheless, power upon an application to it for that purpose to make an order to stay all further proceedings in it; for by s. 138, when a company is being wound up voluntarily, the liquidators may apply to the Court to exercise all or any of the powers which the Court might exercise if the company were being wound up by the Court, including the power to stay proceedings in execution (*c*) or restrain actions (*d*).

Mere threats of actions against the voluntary liquidator are not within s. 138, but the liquidator can obtain protection by petitioning for a supervision order, which will be readily granted (*e*).

Of course, such cases must not be confused with those in which costs and expenses have been incurred in the winding-up on behalf of the estate; and where an action brought by liquidators fails, execution by the defendant for costs will not be restrained (*f*).

The arrest of a vessel by the Admiralty Court is a sequestration (*g*).

The rights of the Crown in respect of Crown debts are not affected by the Act (*h*).

The avoidance, under s. 163, of an execution, &c., against a company in liquidation is an avoidance to all intents whatsoever, and leaves to the judgment creditor no right or interest under it (*i*).

(*a*) *Universal Disinfectors Co.*, 20 Eq. 162.

(*b*) *Hartford v. Amicable Mutual Ass. Co.*, Ir. R. 5 C. L. 368.

(*c*) *Westbury v. Twigg* [1892], 1 Q. B. 77; *Thurso New Gas Co.*, 42 Ch. D. 486; *Thomas v. Patent Leonite Co.*, 17 Ch. D. 250; *Poole Firebrick Co.*, 17 Eq. 268; *Sablottière Hotel Co.*, 3 Eq. 74.

(*d*) *Keynsham Co.*, 33 Beav. 123; *Thames Plate Glass Co. v. Land and Sea Telegraph Co.*, 6 Ch. 643; *Life Assurance of England*, 34 L. J. Ch. 64; *Harrison v. Mortgage Insurance Co.*, 10 T. L. R. 141.

(*e*) *Zoedone Co.*, 53 L. J. Ch. 465.

(*f*) *Ex p. Levick*, 5 Eq. 69;

Mudrial Bank v. Pelley, 7 Eq. 442; *Ex p. Smith*, 3 Ch. 125. As to a successful plaintiff in an action brought by leave, see *Bailey and Leatham's Case*, 8 Eq. 94.

(*g*) *Australian Navigation Co.*, 20 Eq. 325. See *Rio Grande do Sul Steam Co.*, 5 Ch. D. 282.

(*h*) *English Joint Stock Bank*, W. N. 1886, p. 199; *Henley & Co.*, 9 Ch. D. 469. See *Oriental Bank Corp.*, *Ex p. Crown*, 28 Ch. D. 643; and *Ex p. Postmaster-General*, 10 Ch. D. 595. But see *Regent United Service Stores*, 38 L. T. 130, where collector of Queen's taxes restrained.

(*i*) *Ex p. Fourdrinier*, *Re*

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After a company has been ordered to be wound up in this country, judgment creditors, who are in this country, and have proved under the winding-up, will not be allowed to attach property in India belonging to the company (*a*).

The Court, when it stays execution, does so upon the terms of the creditor being admitted to prove in the winding-up for the amount of his debt, costs, and costs of application to stay (*b*). A creditor-plaintiff in an action against a company in voluntary liquidation is not entitled to any priority in the winding-up for his costs of the action; he can only add them to his debt (*c*).

DISTRESS BY LANDLORD, &c.

Application to the Court to exercise its judicial discretion is necessary when, after the commencement of a winding-up, a landlord desires to distrain for rent on the goods of a company in liquidation (*d*). It is incumbent on the landlord to shew some special circumstances justifying the Court in depriving the creditors of the company of the benefit of the 163rd section. The landlord must shew one of two things: either that there was some special equity making it unjust that he should not be allowed to distrain, or else that the rent has accrued under such circumstances that it ought to be paid as part of the costs of the winding-up (*e*).

Distress will not be allowed for rent **accrued due before** the date of the presentation of the **petition** for winding-up when the lessor can prove in the winding-up jointly with the other creditors (*f*); and the Court will restrain a landlord who threatens or proceeds to levy a distress for such rent (*g*). The 10th section of the Judicature Act, 1875, does not so far assimilate the rules in the winding-up of companies to the rules in bankruptcy (*h*) as to give a

Artistic Colour Printing Co., 21 Ch. D. 510.

(*a*) *Oriental Inland Steam Co.*, 9 Ch. 557. As to Scotland and Ireland, see *International Pulp Co.*, 3 Ch. D. 594; *Middlesborough Firebrick Co.*, 52 L. T. 98. See *South Eastern of Portugal Ry. Co.*, 17 W. R. 982.

(*b*) *Poole Firebrick Co.*, *supra*.

(*c*) *Thurso New Gas Co.*, *supra*.

(*d*) See *supra*, s. 163, and ss. 85 and 87. See *River Swale Brick Co.*, W. N. 1883, p. 104, as to lessor being able to exercise com-

mon law right to distrain notwithstanding special power.

(*e*) *Lancashire Cotton Spinning Co.*, *Ex p. Carnelley*, 35 Ch. D. 656; *Oak Pits Colliery Co.*, *infra*.

(*f*) *Coal Consumers Assoc.*, 4 Ch. D. 625; *Bridgewater Engineering Co.*, 12 Ch. D. 181; *Thomas v. Patent Lionite Co.*, 17 Ch. D. 250. See also *Progress Ass. Co.*, 9 Eq. 370; *Traders, N. Staffordshire Co.*, 19 Eq. 60.

(*g*) *Ib.*, *Oak Pits Colliery*, *infra*.

(*h*) See now s. 42 of B. Act, 1883, 46 & 47 Vict. c. 52.

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The Apportionment Act, 1870, which provides that rent shall, like interest on money lent, be considered as accruing from day to day, does not alter the date at which it becomes due (b).

It is now provided by the Preferential Payments in Bankruptcy Act, 1888 (c), that in the event of a landlord or other person distraining or having distrained on any goods of a company being wound up within three months next before the date of the winding-up order, the debts to which priority is given by s. 1 of that Act, viz. parochial and local rates, taxes, &c., shall be a first charge on the goods so distrained on, or the proceeds of sale. But in respect of any money paid under any such charge the landlord or other person is to have the same rights of priority as the person to whom such payment is made.

In order to entitle a landlord to distrain for rent accrued since the winding-up, the liquidator must have either adopted the contract or used the property for the beneficial winding-up of the company (d).

If the company continue in occupation of the lands of the lessor for its own benefit, or for the convenience of the winding-up, with a view to the realization of the property to better advantage, or disposing of it as a going concern, the rent of the premises must be apportioned under the Apportionment Act, 1870 (e), and the lessor will be entitled to payment of, or to distrain for, the full rent due *after* the date of the presentation of the petition (f). For if, after a company is wound up, the company or the liquidator on its behalf, in order to acquire gain or to avoid loss, enter into contracts or occupy land, they must do so on the same terms as any other persons, and neither the

(a) *Coal Consumers Ass., supra*; *Thomas v. Patent Lionite Co.*, 17 Ch. D. 250; *Bridgewater Engineering Co., supra*. See *Westbourne Grove Drapery Co.*, 5 Ch. D. 248; *North Yorkshire Iron Co.*, 7 Ch. D. 661.

(b) *United Club and Hotel Co.*, 60 L. T. 665.

(c) 51 & 52 Vict. c. 62, s. 1 (4). As to Ireland, 52 and 53 Vict. c. 60.

(d) *Re House and Land Investment Trust*, 42 W. R. 572.

(e) 33 & 34 Vict. c. 35.

(f) *South Kensington Stores*, 17 Ch. D. 161; *Silkstone and Dodworth Coal Co.*, *ib.* 158; *General Slatre Co. v. Witley Brick Co.*, 20 Ch. D. 260. See also *Regent &c., Stores*, 8 Ch. D. 616; *Eschall Coal Co.*, 4 De G. J. & S. 377. See *North Yorkshire Iron Co., supra*; *Lundy Granite Co., Ex p. Heaven*, 6 Ch. 462; *Progress Assoc. Co.*, 9 Eq. 370; *Kingston Royal Marine Hotel Co.*, 15 W. R. 978; *Brown, Bayley, & Dixon*, 18 Ch. D. 649; *Oak Pits Colliery Co., infra*.

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persons with whom the contracts are entered into, nor the persons to whom sums in respect of the land are payable, whether landlords or rating authorities, are bound to accept a dividend on their claims (a). But where possession is retained, with the acquiescence of the lessor, for the benefit of all parties, leave to distrain will not be given (b). The fact that the liquidator left the company's plant and machinery where he found them, that he had them valued for sale, and that he took no steps to surrender the company's interest to the landlord, did not entitle the landlord to distrain, or to be paid in full (c). For the landlord has no right to distrain for, or to be paid in full, rent since the winding-up where the liquidator has done nothing except abstain from trying to get rid of the property, nor is it sufficient that the liquidator has derived an indirect advantage from the demised property (d).

Where the liquidators repudiated the ownership of the land by applying to the Court for leave to get rid of the land, and gave notice to the tenant in occupation of the land and to the owner of the rent-charge that they repudiated the land, no subsequent claim was allowed for rent accrued since the repudiation (e).

Where rent is due in advance the same principle applies; the landlord is only entitled to be paid in full for such time as the liquidator continues in beneficial occupation, and he must prove for the balance (f).

The word "sequestration" in s. 163 applies to the landlord's right of sequestration to secure rent given him by the Scotch law, and renders it void to all intents (g). Such sequestration is also a "proceeding" within s. 87 (h).

The case is different where the landlord seeks to proceed by re-entry instead of by distress (i); and if there is a proviso for re-entry on non-payment of rent or in case of a winding-up, and the landlord applies for payment of the rent in full or for leave to re-enter, then if the company desire to hold the estate they must satisfy the legal condition and pay the whole rent in full which became payable

(a) *Per Fry, L.J., National Arms, &c., Co.*, 28 Ch. D. 474; and see the cases as to rates, *post*, p. 72.

(b) *Progress Assce. Co., supra; Bridgewater Engineering Co., supra.*

(c) *Oak Pits Colliery Co.*, 21 Ch. D. 322.

(d) *Ib. Re House and Land Investment Trust*, 42 W. R. 572.

(e) *Blackburn Building Society*,

42 Ch. D. 343.

(f) *Shackell v. Chorlton* [1895], 1 Ch. 378.

(g) *Wanzer, Ltd.* (1891), 1 Ch. 305.

(h) *Ib.*, where leave to proceed with the sequestration was given on terms.

(i) See the remarks of Fry, J., in *South Kensington Stores, supra*, at p. 166, and *infra*.

Chap. V. after the commencement of the winding-up, whether the rent was due for possession enjoyed before or after the commencement of the winding-up (*a*). And if the property is valuable, an application against the liquidator to give up possession may secure the payment of any rent in arrear (*b*). The landlord will not be prevented from exercising this legal right, in order to give time for a reconstruction of the company (*c*).

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When, in a winding-up, a landlord comes to the Court asking for the possession of property which is under the control of the Court, and the claim is one against which the liquidator would have no defence, the right course is to order the liquidator to give up possession (*d*). So, where no question arises as to the construction of a proviso for re-entry, which clearly reserves to the landlord a right to re-enter on the making of a winding-up order, the Court will order possession to be given to him, and would not put him to the useless expense of bringing an action to which there was no defence (*e*).

The liquidator could not, it would seem, be made personally liable for the rent (*f*).

Although a lessor be restrained from distraining, he can prove in the winding-up.

S. 163 only applies where the landlord is a creditor of the company, and not where there is no privity between the lessor and the company, as in the case of the company being only under-lessees, or only equitable owners of the premises (*g*), as where the lease is granted to trustees for the company (*h*). In such a case the landlord cannot

(*a*) *Ib.*, and see *Silkstone and Dodworth Coal Co.*, 17 Ch. D. 158. *Quere*, as to rent payable before the winding-up. See these cases; and *Prof. Payments in Bankruptcy Act*, 1888, *supra*.

(*b*) *General Share Co. v. Wetley Brick Co.*, 20 Ch. D. 260.

(*c*) *New North Staffordshire, &c., Coal Co.*, W. N. 1884, p. 106.

(*d*) See the remarks of Jessel, M.R., in *General Share Co. v. Wetley Brick Co.*, 20 Ch. D. 260, 267, which see also as to the meaning of "if the company shall be wound up."

(*e*) *Ib.*

(*f*) See *Wearmouth Crown Glass Co.*, 19 Ch. D. 640, at p. 642. See *Graham v. Edge*, 20

Q. B. D. 683. He has no power to disclaim, *Mann's Case*, 36 L. T. 439.

(*g*) *Traders' North Staffordshire Co.*, 19 Eq. 60; *Lundy Granite Co.*, *Ex p. Heavan*, 6 Ch. 462; *Exhall Coal Co.*, 4 De G. J. & S. 377, and see 34 L. J. Ch. 123. See *Trimsaran Coal Co.*, W. N. 1876, p. 214, as to the owner of a tithe-rent charge, and *Bailey v. Badham*, 30 Ch. D. 84.

(*h*) See cases in last note, and see *Carriage Co-operative Assoc.*, *Ex p. Clemence*, *infra*; *Humble v. Hunter*, 12 Q. B. 310; *Eden v. Blake*, 13 M. & W. 614. As to the right of trustees of lease to indemnity, see *Exhall Mining Co.*, 35 Beav. 449.

obtain leave to prove against the company, for he is not a creditor of the company at all; and he can distrain on any goods he may find upon the land (a).

Where, however, the company were under-tenants, and the landlord had accepted a promissory note of the company as collateral security, which was dishonoured, and he had a right to prove on it, it was held that the landlord might distrain (b). This decision, however, has been doubted in a later case, and seems to be wrong on principle (c). Where debenture-holders have a charge on the property of a company for a sum exceeding the full value of the property, the landlord may distrain, because the "estate and effects" on which such distress is levied are in fact the property of the debenture-holders, and not of the company, and therefore s. 163 does not apply (d). The fact that the debenture-holders are willing and offer to release their security, and stand as general creditors, makes no difference in the landlord's right (d).

As in the case of executions, &c., s. 163 is qualified by s. 87 with respect to distress, and a distress must be sanctioned by the Court under the latter section (e).

A mortgagee, where the mortgage contains an attornment clause, cannot now distrain; the power of distress is void, as being an unregistered Bill of Sale (f).

Rates, taxes, &c.—It was held that the rule in bankruptcy giving local rates due from the bankrupt priority over his other debts did not apply, under s. 10 of the Judicature Act, 1875, to the case of a company in liquidation (g); and that rates were different from rent, and

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(a) *Traders' North Staffordshire Co., supra*; *Regent, &c., Stores*, 8 Ch. D. 616; and see other cases cited, p. 70, note (g).

(b) *Carriage Co-operative Ass., Ex p. Clemence*, 23 Ch. D. 154.

(c) *New City Constitutional Club Co., Ex p. Purssell*, 34 Ch. D. 646.

(d) *New City Constitutional Club Co., Ex p. Purssell*, 34 Ch. D. 646. The Court gave no opinion on the question whether the landlord could have distrained if the debenture-holders had been out of the way.

(e) *Traders' North Staffordshire Co.*, see *supra*, p. 65. See *Dry Docks Corp. of London*, 39 Ch. D.

306; and see cases under notes (d) and (a), *ante*, p. 65, 66.

(f) *Green v. Marsh* [1892], Q. B. 330; *In re Willis, Ex p. Kennedy*, 21 Q. B. D. 384; overruling *Re Brown, Bayley, & Dixon*, 18 Ch. D. 649; *Stockton Iron Co.*, 10 Ch. D. 335; *Lancashire Cotton Spinning Co., Ex p. Carnelley*, 35 Ch. D. 656.

(g) *Albion Steel Co.*, 7 Ch. D. 547; *Printing, &c., Registering Co.*, 8 Ch. D. 535. See *West Hartlepool Iron Co.*, 34 L. T. 568 (where it was decided that the possession of the liquidator was merely possession and occupation, and not enjoyment), and *Withernsea Brickworks*, 16 Ch. D. 337.

Chap. V. were not apportionable under the Apportionment Act, 1870 (a).

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But now, by the **Preferential Payments in Bankruptcy Act, 1888**, in the distribution of the assets of any company being wound up from 1889, all parochial or other local rates due from the company at the date of the commencement of the winding-up, and having become due and payable within twelve months next before that time, and all assessed taxes, land tax, property or income tax assessed on the company up to the 5th day of April next before the date of the commencement of the winding-up, and not exceeding in the whole one year's assessment, are to be paid in priority to all other debts; subject, however, to the other provisions of the Act, which will be found in the Appendix.

The decisions relating to the landlord's right to distrain for rent **after a winding-up** have already been referred to, and should be considered in cases with regard to rates made after that period. The true test to be applied, in order to ascertain whether rates ought to be paid in full in respect of property of a company possession of which has been retained by a liquidator, is whether there has been a "beneficial occupation" within the meaning of the rating statutes (b). Rates, therefore, have been ordered to be paid in full where the Court made an order that the liquidator should be allowed to carry on the business with a view to its sale as a going concern, although the business was carried on with no profit at all (c). So, also, where there were contracts and work to be completed, and the occupation by the company was continued in order to complete the same, and with a view to the more advantageous realization of its assets (d). And even where a caretaker is employed by the liquidator to take possession of the company's business premises and the plant thereon to prevent trespass and injury, though the business is not carried on, and there is no intention to sell as a going concern (e). The same principles will guide the discretion of the Court, whether the application is in the shape of an

(a) *Wearmouth Crown Glass Co.*, 19 Ch. D. 640.

(b) *Blazer Fire Lighter, Id.* [1895], 1 Ch. 402; *National Arms, &c., Co.*, 28 Ch. D. 474 (where the case of *West Hartlepool Iron Co.*, *supra*, was doubted); *International Marine Hydropathic Co.*, 28 Ch. D.

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(c) *International Marine Hydropathic Co.*, *supra*.

(d) *National Arms, &c., Co.*, *supra*.

(e) *Blazer Fire Lighter, Id.*, *supra*.

application for leave to distrain, or of an application for payment (a).

Where the liquidator, being in possession, does not appeal against the assessment, the Court will not refuse to order payment of the rate in full on the ground of its being too high, except, perhaps, in extreme cases (a).

The Crown.—The provisions of the Bankruptcy Act, 1883, which take away the priority of the Crown over other creditors in the distribution of assets in bankruptcy, have not, by virtue of the assimilating provisions contained in s. 10 of the Judicature Act, 1875, been incorporated into the Companies Act, 1862, so as to bar the prerogative right of the Crown to issue process, and thus to obtain payment in full, in priority over other creditors, in respect of a debt due from a company in course of liquidation (b). The Postmaster-General, on behalf of the Crown, has been held to be entitled to payment in priority over other creditors of a bank of the balance due upon the letter-receivers' accounts in respect of Post-Office moneys (c).

See now the provisions of the Preferential Payments in Bankruptcy Act, 1888, *supra*, as to taxes.

Companies not formed under the Act.—In the case of a company not formed under the Act, as creditors may be entitled to proceed against members individually, a similar provision is made with respect to actions or proceedings commenced or proceeded with against any contributory as such (d), in respect of any debt of the company (e). Where proceedings are pending for winding up an unregistered company, all the provisions of Part IV. of the Act of 1862, other than those expressly excepted, are applicable; and applications can be made under ss. 85, 87, or 163 (f).

(a) *National Arms, &c., Co., supra.*

(b) *Oriental Bank Corp., Ex p. Crown*, 28 Ch. D. 643. See *Exchange Bank of Canada v. The Queen*, 11 App. Cas. 157; *Henley & Co.*, 9 Ch. D. 469; *English Joint Stock Bank*, W. N. 1866, p. 199; *Ex p. Postmaster General*, 10 Ch. D. 595. But see *Regent United Service Stores*, 38 L. T. 130, where collector of Queen's taxes restrained. As to the right of the Crown in proceedings by distress, see *Att.-Gen. v. Leonard*, 38 Ch.

D. 622.

(c) *West London Commercial Bank*, 38 Ch. D. 364; *Rex v. Ward*, 2 Ex. 301, n., followed.

(d) *South of France, &c., Syndicate*, 37 L. T. 260.

(e) See ss. 198, 201, 202; *Lanyon v. Smith*, 3 B. & Sm. 938. As to companies registered under Part VII. of the Act of 1862, see ss. 197, 198, and *Gray v. Raper*, L. R. 1 C. P. 694.

(f) *Rudow v. Great Britain, &c., Ass. Soc.* 17 Ch. D. 600.

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As to a vesting order where an unregistered company has no power to sue and be sued in a common name, see s. 203.

S. 197 (Appendix) sets out the powers of the Court to restrain proceedings in the case of companies authorized to register under the Act; and ss. 199 to 204 those which relate to unregistered companies. It will be observed that by s. 201 a creditor only is entitled to apply. Debts contracted before registration cannot be affected by the registration or order to wind up.

Practice on applications to restrain.—The practice as to applications to restrain under the circumstances just mentioned, and the Court to which such applications should be made, will be found at p. 60; and as to applications for leave to proceed, at pp. 60, 61.

If the execution is on a judgment in an action pending in any other division than the Chancery Division, it is necessary that the action should be in the first place transferred to the judge in whose Court the winding-up is pending, in the manner previously explained in this chapter before an application can be made in the winding-up; and until such transfer, the application is made in the action to the particular division in which it is pending. This practice in the case of windings-up by the Court under the Act of 1890, is not affected by the provisions of s. 32, sub-s. (2) of that Act. If execution be put in after a resolution to wind up has been passed, the liquidator should not appear as claimant in interpleader proceedings, but should apply to the Court for a stay (a).

Where a receiver has been appointed in a debenture-holder's action, an application to distrain should be intitled in the action and in the Companies Acts, and the matter of the winding-up. The receiver should not be served (b).

The practice above mentioned applies equally to a winding-up voluntarily or under supervision.

An application to enforce an undertaking to be answerable in damages, given on the granting of an injunction, ought to be made within a reasonable time after it is ascertained that this injunction has been improperly granted (c).

(a) *Westbury v. Twigg & Co.* [1892], 1 Q. B. 77.

Brick Co., 20 Ch. D. 260. See this case as to form of application.

(b) *General Share Co. v. Wetley*

(c) *Ex p. Hall*, 23 Ch. D. 644.

Costs in respect to ss. 85, 87, and 163.—Where a plaintiff, who has obtained leave to bring an action against a company in liquidation, is successful, and obtains a verdict which carries costs, he is entitled, as a rule, to have his costs of the action, and also his costs of the application for leave to bring the action, paid in full out of the assets of the company, as well as any costs of an application to establish such right (*a*). Chap. V.

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The costs of the application must be paid by the creditor if **leave to proceed** has been **refused** (*b*). But an exception may be made if the creditor has been hardly dealt with by the company (*c*). No costs incurred after a winding-up can be recovered if leave has not been obtained. The Court has no jurisdiction to order payment out of the assets of costs incurred by shareholders not representing the company who have commenced an action on their own responsibility, and have continued it without leave in the winding-up (*d*).

If an action or execution is restrained and stayed on the application of the company, all that a creditor can do is to **add his costs to his debt** (*e*).

A **mortgagee** is entitled to all his costs properly incurred in enforcing his security (*f*).

A creditor may bring an action after a **voluntary winding-up**, as he has no means of establishing his claim; but if he commences or proceeds with an action, he can only be admitted to prove for the costs of the action, and of the application to stay execution as an appendage to the debt (*g*). But where a creditor, after notice of the winding-up, and an offer to allow him to prove for his debt and costs, goes on with the action, he may not be allowed to add to his debt his costs of appearing on an application to stay proceedings (*h*). Whether apart from recent legislation there was jurisdiction to order the creditor to pay

(*a*) *Bailey & Leetham's Case*, 8 Eq. 94. See p. 237, as to costs in general.

(*b*) See the cases in this chapter under the foregoing paragraphs.

(*c*) *Dimson's Estate Fire-clay Co.*, 19 Eq. 202.

(*d*) *Hull Central Drapery Company*, 15 Ch. D. 326.

(*e*) *Keynsham Co.*, 33 Beav. 123; *Wilson v. Natal Investment Co.*, 36 L. J. Ch. 312; *Life Ass. of England*, 34 L. J. Ch. 64; *Hill Pottery Co.*, 1 Eq. 649; *Plas-yn-Mhowys Coal Co.*, 4 Eq. 689; *Poole Fire-*

brick Co., 17 Eq. 268.

(*f*) See as to mortgagee's costs in general, p. 253, and *Rio Grand Do Sul Steam Co.*, 5 Ch. D. 282.

(*g*) *Poole Fire-brick Co.*, *supra*, following the decisions of Lord Romilly in *Re Keynsham Co.*, *supra*; *Life Ass. of England*, *supra*; *Peninsular Banking Co.*, 35 Beav. 280.

(*h*) *Rose v. Gardden Lodge Coal Co.*, 3 Q. B. D. 235; *Walker v. Banagher Distillery Co.*, 1 Q. B. D. 129.

Chap. V. the costs of the application to stay, was not quite clear (a); but now, under s. 5 of the Judicature Act, 1890, the Court has a discretionary jurisdiction over the costs of all applications, and can now order the creditor to pay the costs of the application (b).

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— (a) *Ib.* ; *Peninsular Banking Co., supra* ; *East Kent Shipping, &c., Co.*, 18 L. T. 748.

(b) *Freeman v. General Publishing Co.* [1894], 2 Q. B. 380.

CHAPTER VI.

EFFECT OF WINDING-UP ON DISPOSITIONS OF PROPERTY.

What is the commencement of winding-up.

Lien.

Fraudulent agreements.

Bills of sale.

Effect of winding-up.

Transfer of shares after winding-up.

Company limited by guarantee.

What is the commencement of winding-up.—It is very important to consider when winding-up commences, as all dispositions of the company's property, and all changes in the status of members, become at that time subject to the discretionary power of the Court as to setting aside or confirming the same. The winding-up of a company **by the Court** commences on the presentation of the petition (*a*); and where there are several petitions, it is important that an order should be made on the first presented.

As a rule, the first appearance of the advertisement determines, *ipso facto*, the position of all parties, and must be treated as notice to all the world (*b*). But this presumption would not arise where a reasonable time has not elapsed, sufficient to impute a knowledge of the publication (*c*); as, for instance, in the case of a distant island where it was impossible to have had notice (*d*). Subject to these remarks, from the day on which the advertisement appears all parties are bound, but up to that time it is open to all parties to deal exactly as if the company were not certain to be wound up; assuming, of course, the transaction to be perfectly *bonâ fide* in the strictest sense of the term (*e*). If more than one petition is presented,

(*a*) S. 84. Where a supervision order is made, see *post*, p. 404. See *ante*, p. 41. As to a voluntary winding-up, see *post*, p. 404, and see s. 130. As to life insurance companies, see 35 & 36 Vict. c. 41, s. 4.

(*b*) *Emmerson's Case*, London, Hamburg, &c., Bank, 2 Eq. 231; *ib.* 1 Ch. 433.

(*c*) *National Bank Case* (Eur.

Arb.), L. T. 92; *Empire Ass. Corp.*, 16 L. T. 341.

(*d*) *Oriental Bank Corp.*, *Ex p. Guillemin*, 28 Ch. D. 634.

(*e*) *Emmerson's Case*, *supra*, at p. 124. As to the effect on notices to be given under a contract, see *Asphaltic Wood Pavement Co.*, *Lee and Chapman's Case*, 30 Ch. D. 216.

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the commencement of the winding-up dates from the earliest (a).

The **voluntary winding-up** of a company commences on the date of the extraordinary resolution, if the resolution be simply an extraordinary one; or on the date of the confirmatory resolution, if the resolution be a special one (b).

If the voluntary winding-up is continued under the **super-
vision** of the Court, the date of the commencement of the winding-up remains unaltered.

But if after a voluntary winding-up a **compulsory order** is made, the date of the commencement of the winding-up is the date of the presentation of the petition, not the date of the resolution (c). All previous proceedings are not, however, avoided, *ab initio* (d). Where after a **supervision order** a **compulsory order** is made, it has been held that the commencement is the date of the voluntary resolutions, not the date of the petition (e).

As to **life insurance companies**, s. 4 of the Life Assurance Companies Act, 1872 (f), provides for the winding-up of a subsidiary company to be ancillary to the winding-up of the principal company, and the commencement of the winding-up of the principal company is, save as otherwise ordered by the Court, to be the commencement of the winding-up of the subsidiary company.

Lien.—It has been held that a winding-up order puts an end to an agreement for a general lien as regards goods acquired by the company, and sent, after the winding-up order by the liquidator, and that such goods were not the goods of the company (g). But this decision was not followed in a recent case (h). In another case where the goods were sent by the liquidator after the presentation of

(a) *Kent v. Freehold Land, &c.*, Co., 3 Ch. 493; *United Ports Ins. Co.*, 39 L. J. Ch. 146, not followed in *Building Soc. Trust*, 44 Ch. D. 140.

(b) S. 130. *Davies' Case*, 6 Eq. 232; *Weston's Case*, 4 Ch. 20.

(c) *Taurine Co.*, 25 Ch. D. 118; *New York Exchange*, 39 Ch. D. 415.

(d) *Thomas v. Patent Lionite Co.*, 17 Ch. D. 250.

(e) *United Service Co.*, 7 Eq. 76; *sed quære*, see *Taurine Co.*, *supra*, where this case was much criticized.

(f) 35 & 36 Vict. c. 41, s. 4.

(g) *Wiltshire Iron Co. v. G. W. Ry. Co.*, L. R. 6 Q. B. 101, 776. Doubts have been expressed as to the grounds of this decision; see Lindley, 668 (5th ed.). See *Goringe v. Irwell India Rubber, &c., Works*, 34 Ch. D. 128. Cf. *English Joint Stock Bank*, 3 Eq. 341. A salaried agent entrusted with goods for sale held not to be a factor, *Hermann Loog, Ltd.*, W. N. 1887, p. 180, but order varied on appeal, see W. N. 1887, p. 191.

(h) *Llangennech Coal Co.*, 56 L. T. 475.

the petition, but before the winding-up order, the lien was held to be still good (a).

The lien on property in the possession of a creditor before the commencement of the winding-up is not put an end to by the winding-up (b). But after the commencement of the winding-up, a lien cannot be acquired (c).

A voluntary winding-up does not differ from any other winding-up as regards any lien claimed on property coming into the possession of the creditor after the passing of the resolution (d).

The company's solicitor before the winding-up can claim a lien on documents relating to allotments of shares and the like which have come to his hands before the presentation of the petition, but he must deliver up to the liquidator, subject to his lien, the share register and minute-book, or other documents which have come to his hands after the presentation of the petition but before the winding-up order (e). He cannot claim a lien for costs incurred before incorporation of the company (f).

Fraudulent agreements.—If a person enters into a fraudulent agreement with a company to enable it to have a fictitious credit, and places money to its credit under such agreement, he cannot, after a winding-up, claim to have any balance paid to him (g).

As to fraudulent preference, see *infra*.

Bills of sale.—As to bills of sale, and registering debentures as bills of sale, see Chapter VII., p. 107.

Effect of winding-up.—Where a company is being wound up by the Court, or subject to its supervision, all dispositions of the company's property, or transfers of shares, and alterations in the status of its members (h) made between the commencement of the winding-up and the order are, unless the Court otherwise orders, void (i). *The application will, in general, be made by summons.* Any disposition

(a) *Northfield Iron Co.*, 14 L. T. 695. See *Pavy's Fabric Co.*, 1 Ch. D. 631, as to the lien of an agent on goods for amount of bills.

(b) *Ib.*

(c) See *Capital Fire Ins. Assoc.*, 24 Ch. D. 408.

(d) *North West of Ireland Deep Sea Fishery Co.*, W. N. 1872, p. 11; *Pavy's Fabric Co.*, *supra*. As to property in a foreign country, see *South Eastern of Portugal Ry.*

Co., 17 W. R. 982. See *Brentwood Brick, &c., Co.*, 4 Ch. D. 562, as to a contract excluding vendor's lien.

(e) *Capital Fire Ins. Assoc.*, 24 Ch. D. 408.

(f) *Re Galland*, 31 Ch. D. 296.

(g) *Great Berlin Steamboat Co.*, 26 Ch. D. 616.

(h) See *Barge's Case*, 5 Eq. 420, as to what is considered an alteration of status.

(i) S. 153. See ss. 131, 163, 164.

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of property after the winding-up order can only be validly made by the liquidator or the Court (*a*).

So, where a company is wound up voluntarily, the company ceases to carry on business except for the purpose of the winding-up, and all transfers of shares, except transfers made to or with the sanction of the liquidators, or alteration in the status of the members taking place after the commencement of the winding-up, are void (*b*). But the retrospective effect of a compulsory order would not, it seems probable, make void all dispositions of the company's property by liquidators in a voluntary winding-up before the order (*c*).

Transfer of shares after winding-up.—See *post*, Chapter VIII., p. 137.

S. 153 applies to dispositions by the company of its property, and not to payments to the company (*d*); or to a transfer of shares to it (*e*).

S. 114, as to a petition being *lis pendens*, is now repealed by 30 & 31 Vict. c. 47, s. 1, as superfluous.

The Court will make valid any transactions in the ordinary course of trade, and dispositions of property by sale, mortgage, or any other means, which are completed *bonâ fide* between the presentation of the petition and the winding-up order (*f*); but if the contract is executory and incomplete at the date of the winding-up order, the Court has no discretion to order it to be performed. And where, in a contract for sale, the property has not passed, all that the purchaser can do is to prove for damages (*g*).

So, also, the Court may confirm *bonâ fide* transfers of shares completed before the order, in ignorance of the presentation of the petition, but an incomplete contract will not be enforced (*h*).

(*a*) See s. 95.

(*b*) S. 131. See further as to the effect of voluntary winding-up, *post*, Part III., Chap. I.

(*c*) See *Thomas v. Patent Lionite Co.*, 17 Ch. D. 250, and *cf.* s. 151.

(*d*) *Mersey Steel, &c., Co., v. Naylor*, 9 Q. B. D. 648, 665, on *ap. see infra*. As to payments by one company for another after the latter had been wound up being bad, see *United Ports Insce. Co.*, 25 W. R. 580.

(*e*) *Contract Corp.*, 3 Ch. 105.

(*f*) *Wiltshire Iron Co., Ex p. Pearson*, 3 Ch. 443; *Gibbs and*

West's Case, 10 Eq. 312 (charge given to banker on calls confirmed). An acceptance of a bill of exchange by a director, is not a disposition of property, and cannot be declared valid: *Bolognesi's Case*, 5 Ch. 567. As to a contract for delivery of goods by instalments, see *Mersey Steel, &c., Co. v. Naylor & Co.*, 9 App. Cas. 434. As to payment for goods, see *Civil Service and General Store, infra*.

(*g*) *Ib.* See *Oriental Bank Corp., Ex p. Guillemain, infra*.

(*h*) *Emmerson's Case, London, Hamburg, &c., Bank*, 2 Eq. 231;

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A contract entered into at a distant foreign branch of a banking company, after presentation of a petition and appointment of a provisional liquidator in England, but before any notice of the stoppage of the bank in London, and before the date of the winding-up order, is not invalidated by s. 153 of the Act; and accordingly the creditors in respect of such transaction are not entitled to have their money refunded as on the footing of a void transaction, but can only prove for the amount under the winding-up *pari passu* with the other creditors (a). The Companies Act, 1862, does not contain any provisions corresponding in terms with those contained in the Bankruptcy Act, 1883 (b).

The combined effect of s. 153 of the Act of 1862, and s. 10 of the Act of 1890 (c), is to make directors *primâ facie* liable for all moneys of the company expended by them, not in the ordinary course of business, since the commencement of the winding-up (d).

S. 10 of the Judicature Act, 1875, does not let in the bankruptcy rules as to reputed ownership and order and disposition (e). Nor as to unregistered bills of sale (f). Where, therefore, S. & Co. held an acceptance of a company which they could not meet, and, as security, the company, on the 23rd January, sent S. & Co. a letter saying, "We hold at your disposal the sum of about £425 due from C. for goods delivered by us to them up to the 31st December, 1884, until the balance of our acceptance for £660 has been paid;" and on the 5th February

ib. 1 Ch. 433. But see however now as to the date of stoppage, the *Glasgow Bank Cases*, 4 App. Cas. 548, 615, 625. See *Walker's Case*, 2 Eq. 554. And see *Rudge v. Bowman*, L. R. 3 Q. B. 689; *Chapman v. Shepherd*, L. R. 2 C. P. 228, as to s. 153 not abrogating the rules of the Stock Exchange, and as to the contract as between buyer and seller. As to registration not being affected by s. 153, see *Ex p. Contract Corp.*, 3 Ch. 105; *Ward and Garfit's Case*, 4 Eq. 189. See *post*, p. 139, as to the effect of the order on transfers of shares. As to a trustee in bankruptcy disclaiming shares, see *post*, p. 150. As to an advance by shareholders being arranged to be for calls in case of winding-up, see *Barge's Case*,

supra.

(a) *Oriental Bank Corp., Ex p. Guillemin*, 28 Ch. D. 634.

(b) 46 & 47 Vict. c. 52, s. 37, sub-s. 2 and 3, and s. 49.

(c) Formerly s. 165 of the Act of 1862, but now repealed by the above Act.

(d) *Neath Harbour Smelting Works* (inquiry instead of account afterwards arranged); 56 L. T. 727.

(e) *Crumlin Viaduct Works Co.*, 11 Ch. D. 755; *Gorringe v. Irwell India-Rubber, &c., Works*, 34 Ch. D. 128.

(f) *Re Knott*, 7 Ch. D. 549, n. See *Withernsea Brickworks*, 16 Ch. D. 337; *Re Count d'Epineuil*, 20 Ch. D. 217.

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S. & Co. gave C. notice of the assignment, but on the 2nd February a petition was presented for the winding-up of the company, and on the 25th a winding-up order was made, it was held that S. & Co. were entitled to any sum due to the company from C. to the extent of £425, as no notice was necessary, as between assignor and assignee, to perfect the assignment; therefore the assignment was complete before the winding-up, and s. 153 of the Companies Act, 1862, did not apply; and also that the bankruptcy rule as to reputed ownership was not imported into the winding-up by s. 10 of the Judicature Act, 1875 (a).

Payment by a company, after the commencement of the winding-up, of a debt previously due to a creditor who is ignorant of the petition, is not, even in the case of a perfectly *bonâ fide* debt of the company, a transaction to which the Court will give validity (b).

Where a creditor, having presented a petition, was paid part of his debt, but did not receive the balance on the day fixed, and *proceeded* with his petition, and a winding-up order was made upon that and another petition, the creditor was compelled to repay the money so received by him (c). The above rule, however, was not adhered to in a case where the payment was made on the morning of the day after the publication of the advertisement in the *Gazette* (d).

Any **conveyance** or assignment, made by a company, formed under the Act of 1862, of all its estates and effects to trustees for the **benefit of all its creditors**, is void in every respect (e).

The doctrines of **undue or fraudulent preference** are applicable to a company which is being wound up under the Act; and conveyances or other acts relating to property by a company, which in the case of an individual trader would, in the event of his bankruptcy, be deemed to be by way of fraudulent preference, are, if the company be wound up, invalid (f), and this is so even in cases where

(a) *Gorringe v. Irwell India-Rubber, &c., Works, supra.*

(b) *Civil Service and General Store*, 57 L. J. Ch. 119. See *United Ports Insce. Co.*, 25 W. R. 580, as to payment by another company on behalf of the company being wound up.

(c) *Liverpool Civil Service Assoc.*,

Ex p. Greenwood, 9 Ch. 511.

(d) *National Bank's Case* (Eur. Arb.), L. T. 92. See *post*, p. 242, as to notice.

(e) S. 164.

(f) S. 164; see s. 153. See *Daly & Co.*, 19 L. R. Ir. 83, for instance of transactions declared fraudulent.

under the bankruptcy law the transaction might be sustained under the doctrine of mutual credits, for s. 164 of the C. A. 1862 does not incorporate into that Act the 38th section of the Bankruptcy Act, 1883 (*a*).

The law of bankruptcy for the time being is to be applied (*b*).

S. 48 of the Bankruptcy Act, 1883 (*c*), is as follows:—

“Every conveyance or transfer of property, or charge thereon made, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money, in favour of any creditor, or any person in trust for any creditor, with a view of giving such creditor a preference over the other creditors shall, if the person making, taking, paying, or suffering the same is adjudged bankrupt on a bankruptcy petition presented within three months after the date of making, taking, paying, or suffering the same, be deemed fraudulent and void as against the trustee in the bankruptcy.

“This section shall not affect the rights of any person making title in good faith, and for valuable consideration through or under a creditor of the bankrupt.”

The conveyance of the whole of a company's property for a past debt only must necessarily defeat creditors; but before a transaction (*d*) amounting to a conveyance of a part only can be impeached as a fraudulent preference, it must be proved to have been—

- (1.) Made with the substantial, effectual, or dominant view of giving the creditor a preference (*e*). So that if it, in fact, were made with a different view, the transaction cannot be avoided, though made without pressure; as, for example, payments or dealings in the course of business (*f*). For in order to impeach any disposition of the company's property as a fraudulent preference, it is necessary that there should have been a contemplation of winding-up, and no pressure by the creditor (*g*).
- (2.) The company must have been unable to pay its debts as they became due from its own moneys.

(*a*) *Washington Diamond Mining Co.*, *Re* [1893], 3 Ch. 95; *Kent's Case*, 39 Ch. D. 259.

(*b*) See s. 153.

(*c*) 46 & 47 Vict. s. 52.

(*d*) As to a transaction not being strictly a disposition of property, see *Re Marsden*, 25 Ch. D. 311; *Land Development Assoc.*, *Kent's Case*, *infra*.

(*e*) *Ex p. Griffith*, *Re Wilcoxon*, 23 Ch. D. 69 (see this case as to

the Court having regard only to the statutory definition); *Ex p. Hill*, *Re Bird*, 23 Ch. D. 695.

(*f*) *Ex p. Taylor*, *Re Goldsmid*, 18 Q. B. D. 295. See *Willmott v. London Celluloid Co.*, *infra*. *Re Mills*, 58 L. T. 235, 871; *Sharp v. McHenry*, 38 Ch. D. 447.

(*g*) *Inns of Court Hotel Co.*, 6 Eq. 82 (a debenture case). See *Patent File Co.*, *Ex p. Birmingham Banking Co.*, 6 Ch. 83.

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(3.) There must have been a winding-up order on a petition presented within three months from the date of the transaction (a).

The doctrine of fraudulent preference can only be enforced for the benefit of creditors in general; and therefore the rule in bankruptcy (b), that such doctrine cannot be enforced for the benefit of a single creditor or class of creditors, is applicable to the winding-up of a company. Consequently, s. 164 confers no right upon a debenture-holder of a company in liquidation to take proceedings on behalf of himself and the other debenture-holders to set aside a transaction on the ground of fraudulent preference (c). An action to set aside such a transaction can be instituted in the name of the company as plaintiff (d).

The presentation of the petition in the case of companies wound up by the Court, or subject to its supervision, and the resolution to wind up in the case of a voluntary winding-up, are deemed to correspond with the act of bankruptcy (e).

Such cases should be distinguished from those where it is clear that the whole object is to prevent a winding-up, for then there can be no fraudulent preference (f).

But under s. 49 of the Bankruptcy Act, 1883, *bona fide* transactions without notice and for value are protected, and cannot be set aside as fraudulent preferences (g).

The pressure of a director, who is aware of the state of affairs, and to whom security has been given by an insolvent company for a debt, is not such pressure as will prevent the transaction being considered a fraudulent preference (h); except in a case where the debt arises from a contract which, by the articles, directors are allowed to enter into with the company (i). And payment by directors on account of shares, in order to relieve themselves of

(a) *Liverpool and London Guarantee Co.*, 46 L. T. 54. As to a claim on a policy, see *Brown's Case*, 16 Sol. J. 781.

(b) *Ex p. Cooper*, 10 Ch. 510; *Willmott v. London Celluloid Co.*, 31 Ch. D. 425, affirmed on appeal; 34 Ch. D. 147.

(c) *Willmott v. London Celluloid Co.*, *supra*.

(d) *Gaslight Improvement Co. v. Terrell*, 10 Eq. 168.

(e) S. 164.

(f) *Inns of Court Co.*, *supra* (a

debenture case); see also *Patent Fife Co.*, 6 Ch. 83, as to a deposit of deeds by directors as security for a balance of account.

(g) See hereon *Mackintosh v. Payson* [1895], 1 Ch. 505.

(h) *Gaslight Improvement Co. v. Terrell*, 10 Eq. 168. See *Mason's Hall Tavern Co., Re Habershon's Case*, 5 Eq. 286.

(i) *Adamson's Case*, 18 Eq. 670. See this case as to what is a fraudulent preference.

their personal liability on a guarantee for money advanced to the company by a bank, was held to be a valid payment (a).

Directors are entitled to their fees, and they have a right to repay themselves their advances, except when such payments could be impeached as fraudulent preferences (b). But where directors paid calls on their shares in advance, and on the same day appropriated the money in payment of their fees, for which there were at the time, as they knew, no other available assets, it was held that they were not relieved from liability on their shares (c). In a company where directors were obliged to be members, a director's unpaid fees were held to be debts due to him in his character of member, and to be postponed to outside creditors (d). But in another case, arrears of the salary due to a managing director of a company, in which directors were obliged to be shareholders, and damages for breach of contract by the company to employ him as managing director at such salary, were held not to be debts due to him in his character of a member within the meaning of s. 38, sub-s. 7 of the Act of 1862 (e).

Where directors, who had power to receive calls in advance, after the insolvency of the company was admitted, and notice of a general meeting with a view to a voluntary winding-up had been issued, but before the filing of a hostile petition, authorized their solicitor, who was in no way indebted to the company, to pay the bills (amounting to £250) of three pressing creditors; and he paid the £250 and obtained from the directors a receipt for the amount purporting to be for prepaid calls, it was held, upon the liquidator making a call amounting in the solicitor's case to £320, that the payment of the £250 was not a preferential payment, that it was a valid payment of calls in advance, and that the solicitor was only liable for the balance (f).

As to an agreement to apply a debt owed, but not payable, to a shareholder in payment of future calls while

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(a) *Poole, Jackson, and Whyte's Case*, 9 Ch. D. 322, and the cases there cited. See *Forest of Dean Coal Co.*, 10 Ch. D. 450.

(b) *Liverpool and London Guarantee Co.*, 46 L. T. 54. Cf. *Wood's Ship's Woodite, &c., Co.*, 62 L. T. 760, following above case, but not following next case.

(c) *European Central Ry. Co.*,

13 Eq. 255; *Washington Diamond Mining Co.* [1893], 3 Ch. 95.

(d) *Leicester Club Racecourse Co.*, 30 Ch. D. 629.

(e) *Dale and Plant, Ltd.*, 43 Ch. D. 255.

(f) *Ramwell's Case, Re Exchange Banking Co.*, 50 L. J. Ch. 827; *European Central Ry. Co.*, *supra*.

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a petition was pending, being held to be invalid as a fraudulent preference, see case below (a).

The winding-up order of a mutual insurance association does not displace or alter the terms of the contract between the parties regulating their liability (b).

The provisions in the articles of association generally contemplate the company as a going concern (c). The following provisions or articles do not apply in a winding-up:—as to inspection of accounts (d); a secrecy clause (e); against making calls (f); as to interest on calls (g); empowering directors to bring, &c., actions as regards presentation of a winding-up petition by them (h); a clause as to amalgamation (i). But, on the other hand, the following provisions will apply in the winding-up:—any contract compensating servants and officers of the company in certain events, or the like contracts (k); as to preference in the distribution of surplus assets (l); as to the extension or limitation of the liability of contributories *inter se*, and in respect of specified matters (m); as to arbitration in the case of a dissentient shareholder upon a sale under s. 161 (n). It is competent for a company by its memorandum of association to exclude the operation of s. 161, and if so excluded, a dissentient shareholder is not entitled to have his interest valued and paid to him under that section (o).

The winding-up order entirely alters the position of shareholders, that is, it makes the shareholders contributories, and contributories in a totally different way in some respects as regards the debts and liabilities of the concern from what they were before. It has been decided by a

(a) *Land Development Assoc., Kent's Case*, 39 Ch. D. 259. See *Sykes' Case*, 13 Eq. 255.

(b) *London Marine Insurance Assoc.*, 8 Eq. 176.

(c) *Mutual Soc.*, 24 Ch. D. 425, n.

(d) *Yorkshire Fibre Co.*, 9 Eq. 650. But *cf. Metropolitan and Provincial Bank*, 16 W. R. 668.

(e) *Birmingham Banking Co.*, 6 Ch. 83.

(f) *Coed Madog Slate Co.*, W. N. 1877, p. 190. See *Anglesea Colliery Co.*, 1 Ch. 555.

(g) *Welsh Flannel Co.*, 20 Eq. 360.

(h) *Smith v. Duke of Manchester*, 24 Ch. D. 611.

(i) *London, Bombay, and Mediterranean Bank*, 9 Ch. 686.

(k) *Ex p. Logan*, 9 Eq. 149; *Shirreff's Case*, 14 Eq. 417; and see *post*, pp. 92–95, as to proof by servants, &c.

(l) *Bangor Slate Co.*, 20 Eq. 59; *Eclipse Gold Mining Co.*, 17 Eq. 490.

(m) *Maxwell's Case*, 20 Eq. 585; *McKewan's Case*, 6 Ch. D. 447; *Lion Mutual Insce. Assoc. v. Tucker*, 12 Q. B. D. 176.

(n) *De Rosaz v. Anglo-Italian Bank*, L. R. 4 Q. B. 462.

(o) *Cotton v. Imperial and Foreign, &c., Corporation* [1892], 3 Ch. 454.

series of decisions in the House of Lords, commencing with *Webb v. Whiffen* (a), that the 38th section of the Companies Act is not to be read otherwise than literally, and it is not to be read with reference to the previous liabilities of the shareholders or by analogy to the law of partnership whether of a limited or unlimited character (b), but it is to be read as imposing new liabilities on the members of the company—liabilities imposed and defined by that section (c).

Company limited by guarantee.—The effect of a winding-up order on the share capital of a company limited by guarantee will be found in s. 90.

(a) L. R. 5 H. L. 711.

(b) See *per* Lord Fitzgerald, in *Bridgewater Navigation Co., Birch v. Cropper*, 14 App. Cas. 525.

(c) *Per* Jessel, M.R., in *Hull and County Bank*, 15 Ch. D. 507, 511; *Whitehouse & Co.*, 9 Ch. D. 595.

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General rule.—Before proceeding to consider the particular debts or claims which are admissible in proof against a company, it should be stated generally that, in the case of a solvent company, all ordinary debts which are actually due (*a*), and all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, are admissible to proof against the company; a just estimate being made, so far as is possible, of the value, as at the date of the winding-up order, of all such debts or claims as may be subject to any contingency or sound only in damages, or for some other reason do not bear a certain value (*b*).

In the case of insolvent companies, it is necessary now to look to s. 10 of the *Judicature Act, 1875*, to see what debts and liabilities are provable. That section provides as follows:—

“In the winding-up of any company under the Companies Acts, 1862 and 1867 (*c*), whose assets may prove to be insufficient for the payment of its debts and liabilities and the cost of winding-up (*d*), the same rules

(*a*) See ss. 98, 107.

(*b*) S. 158; Gen. O. 1862, r. 25. See s. 10 of the *Jud. Act, 1875*, and *per* Jessel, M.R., in *Macfarlane's Claim*, 17 Ch. D. 337, 339, as to application of the Bankruptcy

Rules. As to the admission of equitable debts, see *Terrell v. Hutton*, 23 L. J. Ch. 345.

(*c*) See *Suche & Co.*, cited, p. 120.

(*d*) See *Milan Tramways Co.*, cited, p. 110, as to assuming this.

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shall prevail and be observed as to the respective rights of secured and unsecured creditors, and as to debts and liabilities provable (a), and as to the valuation of annuities and future and contingent liabilities respectively, as may be in force for the time being under the law of bankruptcy with respect to the estates of persons adjudged bankrupt; and all persons who in any case would be entitled to prove for and receive dividends . . . out of the assets of any such company, may come in . . . under the winding-up of such company, and make such claims against the same as they may respectively be entitled to by virtue of this Act."

After considerable conflict of judicial opinion, it seems that the Bankruptcy Rules which this section has made applicable to the winding-up of insolvent companies, are those having reference to the debts and liabilities provable, the respective rights of secured and unsecured creditors, and the valuation of annuities, and future and contingent liabilities (b).

The words "as to debts and liabilities provable," mean, "as to what debts and liabilities may be proved," and, therefore, the object and scope of this section is to allow everything which would be capable of being proved in a bankruptcy to be proved in a winding-up, whether it be strictly a debt or not (c). The description of debts provable in bankruptcy are set out in s. 37 of the Bankruptcy Act, 1883 (d). That section is as follows:—

37.—(1.) "Demands in the nature of unliquidated damages arising otherwise than by reason of a contract, promise, or breach of trust shall not be provable in bankruptcy (e).

(2.) A person having notice of any act of bankruptcy available against the debtor shall not prove under the order for any debt or liability contracted by the debtor subsequently to the date of his so having notice (f).

(3.) Save as aforesaid, all debts and liabilities, present or future, certain or contingent, to which the debtor is subject at the date of the receiving order, or to which he may become subject before his discharge by reason

(a) See *Mersey Steel Co. v. Naylor*, cited, p. 61.

(b) Lindley (5th ed.), 719.

(c) *West of England Bank, Ex p. Brown*, 12 Ch. D. 825. *Albion Steel and Wire Co.*, 7 Ch. D. 547. So bankruptcy rules as to interest (*Re Summers*, 13 Ch. D. 136), set-off (see *infra*), and contingent liabilities ripening into debts, apply to insolvent companies.

(d) 46 & 47 Vict. c. 52.

(e) *Ex p. Brooke* (C.A.), 3 Ch. D. 494; *Emma Mine v. Grant*, 17 Ch. D. 122.

(f) Notice of act of bankruptcy,

Pike v. Stevens, 12 Q. B. 465; *Hope v. Meek*, 10 Ex. 829; *Bird v. Bass*, 6 M. & Gr. 143; *Sowerby v. Brooks*, 4 B. & Ald. 523; *Edwards v. Cooper*, 11 Q. B. 32; *Lucas v. Dicker*, 6 Q. B. D. 84; *Ex p. Snowball*, 7 Ch. 534; *Ex p. Dickin, Re Waugh*, 4 Ch. D. 524; *Evans v. Hallam*, L. R. 6 Q. B. 713; *Ex p. Harris*, 19 Eq. 253; *Ex p. Arnold*, 3 Ch. D. 70; *Ex p. Vale*, 18 Ch. D. 137; *Ex p. Crosbie*, 7 Ch. D. 123; *Hood v. Newby* (C.A.), 21 Ch. D. 605; *Ex p. Revell*, 13 Q. B. D. 727. (*Onus* is on creditor to prove want of notice.)

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of any obligation incurred before the date of the receiving order, shall be deemed to be debts provable in bankruptcy (a).

(4.) An estimate shall be made by the trustee of the value of any debt or liability provable as aforesaid, which by reason of its being subject to any contingency or contingencies, or for any other reason, does not bear a certain value (b).

(5.) Any person aggrieved by any estimate made by the trustee as aforesaid may appeal to the Court.

(6.) If, in the opinion of the Court, the value of the debt or liability is incapable of being fairly estimated (c), the Court may make an order to that effect, and thereupon the debt or liability shall, for the purpose of this Act, be deemed to be a debt not provable in bankruptcy (d).

(7.) If, in the opinion of the Court, the value of the debt or liability is capable of being fairly estimated, the Court may direct the value to be assessed, before the Court itself without the intervention of a jury, and may give all necessary directions for this purpose, and the amount of the value when assessed shall be deemed to be a debt provable in bankruptcy.

(8.) 'Liability' shall for the purposes of this Act include any compensation for work or labour done, any obligation or possibility of an obligation to pay money or money's worth on the breach of any express or implied covenant, contract, agreement, or undertaking, whether the breach does or does not occur, or is or is not likely to occur or capable of occurring before the discharge of the debtor, and generally it shall include any express or implied engagement, agreement, or undertaking, to pay, or capable of resulting in the payment of money, or money's worth (d),

(a) As to annuity, *Ex p. Blake-more*, 5 Ch. D. 372; *Ex p. Bates*, 11 Ch. D. 914; *Ex p. Neal, Re Batey*, 14 Ch. D. 579; *Ex p. Pearce*, 13 Ch. D. 262. As to order of Divorce Court for payment of alimony, *Linton v. Linton*, 15 Q. B. D. 239. As to bill of costs, *Ex p. Ditton*, 13 Ch. D. 318. As to bills of exchange, *Ex p. Lobbon*, 17 Ves. 334; *Jones v. Gordon*, 2 App. Cas. 616; *Ex p. Newton*, 16 Ch. D. 330; *Ex p. Baker*, 4 Ch. D. 795; *Ex p. Mann*, 5 Ch. D. 367; *Ex p. General S. American Co.*, 10 Ch. 635; *Ex p. Gomez*, 10 Ch. 639. As to consideration illegal, *Ex p. Chavasse*, 34 L. J. Bk. 17; *Ex p. Mather*, 3 Ves. 373; *Ex p. Rogers*, 16 Ch. D. 207; *Ex p. Revell*, *supra*; *Re Lane*, 23 Q. B. D. 74. As to contract, measure of damages, *Ex p. Llansamlet Co.*, 16 Eq. 145. As to costs, *Ex p. Peacock*, 8 Ch. 628; *Ex p. Carr*, 11 Ch. D. 62. As to felony, claim arising out of, *Ex p. Ball*, 10 Ch. D. 667; *Ex p. Leslie*, 20 Ch. D. 131. As to loan from building society, *Ex p. Bath*, 27 Ch. D. 509. As to patent, damages

for infringement of, *Watson v. Holliday*, 20 Ch. D. 780. As to penalty or liquidated damages, *Ex p. Newman*, 4 Ch. D. 724. As to surety, *Gray v. Seckham*, 7 Ch. 680; *Ellis v. Emmanuel*, 1 Ex. D. 157; *Ex p. Nat. Prov. Bank*, 17 Ch. D. 98; *Ex p. Young*, 17 Ch. D. 668. As to tort, *Ex p. Mumford*, 15 Ves. 289. As to voluntary bond, *Ex p. Pottinger*, 8 Ch. D. 621. By wife, *Ex p. District Bank of London*, 16 Q. B. D. 700. By or against partner, *Read v. Bailey*, 3 App. Cas. 94; *Ex p. Harding*, 12 Ch. D. 557; *Ex p. Andrews*, 25 Ch. D. 505; *Ex p. Gliddon*, 13 Q. B. D. 43; *Ex p. Chandler*, *ib.* 50; *Ex p. Salting*, 25 Ch. D. 148. As to mistake in proof, *Ex p. Schofield*, 12 Ch. D. 237; *Ex p. Bagshaw*, 13 Ch. D. 304; *Couldery v. Bartrum*, 19 Ch. D. 394.

(b) See *Ex p. Good*, 14 Ch. D. 82; *Ex p. Waters*, 8 Ch. 562. *Re Gill*, 46 L. T. 824.

(c) See *Re Hoyle*, 8 Ch. 562.

(d) See *Hardy v. Fothergill*, 13 App. Cas. 351.

whether the payment is, as respects amount, fixed or unliquidated; as respects time, present or future, certain or dependent on any one contingency or on two or more contingencies; as to mode of valuation capable of being ascertained by fixed rules, or as matter of opinion."

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A creditor will not be allowed to disturb dividends already paid where he has neglected to carry in his claim; and if all the assets have been distributed he may entirely lose his right to prove (a). *infra* p. 120

Although the company may be estopped from disputing the validity of a claim, creditors may not be in the same position (b).

The distinction should be borne in mind between the debts of the company, and debts incurred for expenses in the winding-up, as the latter are payable in full (c).

Proof by shareholders.—Members of limited companies who are creditors are entitled, on payment of all calls due, to receive dividends at the same time, and at the same rate, as other creditors in the winding-up (d); and this is not altered by s. 10 of the Judicature Act, 1875 (e).

S. 38 (7) of the Act of 1862 provides that "no sum due to any member of a company, in his character of a member, by way of dividends, profits, or otherwise, shall be deemed to be a debt of the company payable to such member in a case of competition between himself and any other creditor not being a member of the company; but any such sum may be taken into account, for the purposes of the final adjustment of the rights of the contributories amongst themselves."

Although a member cannot prove for a debt due to him as such from the company, yet he can prove in competition with creditors who are not members for any debt due to him as a stranger, and for the full amount, notwithstanding that he bought up the debt for less than that amount (f). But where the person stands in a fiduciary relation towards the company he cannot make a profit in such a manner (g).

The right of an assignee to prove in respect of a debt

(a) *Joint Stock Discount Co.'s Claim*, 7 Ch. 646; *Ex p. A'Beckett*, 2 Jur. N. S. 684; *Ex p. Forest*, 2 Giff. 42. See *Kit Hill Tunnel*, 16 Ch. D. 590. See now rules as to proof under Act of 1890, *supra*. See *infra*, p. 99, as to secured creditor.

(b) *Mowatt v. Castle Steel, &c.*, Co., 34 Ch. D. 58.

(c) See p. 253.

(d) *Grissell's Case*, 1 Ch. 528.

(e) *West of England Bank, Ex p. Brown*, 12 Ch. D. 823.

(f) *Grissell's Case*, 1 Ch. 528; *Humber Ironworks Co.*, 8 Eq. 122. See *Ex p. Cannon*, *infra*.

(g) *Ex p. Larking*, 4 Ch. D. 566. See *Milan Tramways Co.*, *Ex p. Theys*, 25 Ch. D. 587.

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assigned by a shareholder after a company has commenced to be wound up is subject to set-off by the company of all calls which may be made subsequently to the assignment and previously to the payment of the debt (*a*).

Where it is provided that a shareholder advancing sums beyond the amount actually called and paid up shall receive interest on such advances, money so paid is to be treated as an advance to the company carrying interest. Such interest cannot be proved in competition as against ordinary outside creditors, but as between the shareholders, the advancing shareholders should be paid back the sum advanced with interest, not only to the commencement of the winding-up, but also up to the repayment, in priority to the ordinary shareholders (*b*).

And where the articles provided that the directors might pay interest on the paid-up capital, and the company, never having made any profits, paid interest out of capital, it was held that such payments were *ultra vires* (*c*).

It is possible that persons may lend money on the security of shares in such a way as to become creditors, and not shareholders (*d*).

Directors, officers, and servants.—A director's unpaid fees, in a company where directors are obliged to be members, are debts due to him in his character of member, and to be postponed to outside creditors (*e*). But arrears of the salary due to a managing director of a company in which directors were obliged to be shareholders, and who was appointed because he had special knowledge of the business which the company was going to carry on, and damages for breach of contract by the company to employ him as managing director at such salary, were held not to be debts due to him in his character of a member within the

(*a*) *China Steamship Co.*, *Ex p. Mackenzie*, 7 Eq. 240; *Ex p. Strang*, 5 Ch. 492; and see *post*, p. 105.

(*b*) *Exchange Drapery Co.*, 38 Ch. D. 171. See *Ex p. Maude*, 6 Ch. 51; *Wincham Shipbuilding, &c., Co.*, 9 Ch. D. 322.

(*c*) *National Funds Ass. Co.*, 10 Ch. D. 118; *Re Sharpe* [1892], 1 Ch. 154; *Guinness v. Land Corp. of Ireland*, 22 Ch. D. 349. But see *Lock v. Queensland*, W. N. (96) 4.

(*d*) *City Terminus Hotel Co.*, *sed qu.* *E. Ry. Co.'s Case*, 14 Eq. 10, *sed qu.* This case is doubted in Lindley

on Partnership. See the summary of cases under "Contributories," *post*, p. 174.

(*e*) *Leicester Club and Race-course Co.*, *Ex p. Cannon*, 30 Ch. D. 629. See *infra* as to when the articles do not provide for remuneration. As to interest on claim for remuneration, see *Re Peruvian Guano Co.*, *Ex p. Kemp* [1894], 3 Ch. 690. Remuneration between presentation of petition and winding-up in discretion of the Court. Inquiry directed if services beneficial. *International Cable Co.*, 66 L. T. 253.

meaning of s. 38, sub-s. 7 (a). The words "or otherwise" in that section must mean something analogous to dividends or profits (b). The directors will, as against the shareholders, be allowed their fees which have been sanctioned, although in the result the dealings of the company are unfavourable (c).

When directors are entitled to 3 per cent. on the "net profits" of the company, net profits means net profits made by the company as a going concern, not profits made on sale of the undertaking (d).

If the business of a company is continued after the winding-up, and the former servants are actually employed, the old contract between the company and its servants continues in force, and notice of discharge must be given pursuant thereto (e). But where the business is wholly at an end, a winding-up will be notice of discharge to the servants of the company from the date of the order (f), or from the resolution to wind up in the case of a voluntary winding-up (g). This rule applies though the liquidator without continuing the business employs the servants in analogous duties with a view to reconstruction (h).

It is provided by the Preferential Payments in Bankruptcy Act, 1888 (i), that the wages or salaries of clerks or servants, and labourers or workmen (k), are, with the other payments there mentioned, to be preferential claims up to a certain amount, and are to be paid in full if the assets are sufficient, subject to the provisions there mentioned. The four months before the commencement of the winding-up mentioned in the section are the months

(a) *Dale and Plant, Ltd.*, 43 Ch. D. 255.

(b) *Ib.*, per Kay, J. *Quære*, Can *Re Leicester Club, &c., Co.*, be supported?

(c) *Commercial and Gen. Life Ass.*, 27 L. J. Ch. 803.

(d) *Frames v. Bultfontein Mining Co.* [1891], 1 Ch. 140; as to how net profits are ascertained, and payment of interest, see *Re Peruvian Guano Co.*, *Ex p. Kemp* [1894], 3 Ch. 690.

(e) *English Joint Stock Bank*, 3 Eq. 341.

(f) *Chapman's Case*, 1 Eq. 346; *Oriental Bank Corp., MacDowall's Case*, 32 Ch. D. 366; *Ex p. Schumann, Re Foster & Co.*, 19 L. R. Ir. 241. See *Reid v. Explosives*

Co., *infra*, p. 95.

(g) *Shirreff's Case*, 14 Eq. 417, where the manager was appointed liquidator; *Ex p. Schumann, Re Foster & Co.*, *supra*.

(h) *Oriental Bank Corp., MacDowall's Case*, *supra*.

(i) 51 & 52 Vict. c. 62, s. 1 (appendix), repealing 46 & 47 Vict. c. 28, which see as to windings-up before 1889. See *Re Smith*, 54 L. T. 307. The Act does not affect the Friendly Societies Act, 1875, nor the Stannaries Act, 1887. As to Ireland, see 52 & 53 Vict. c. 60.

(k) As to piece-work, see *Ex p. Hollyoak*, 35 W. R. 386. As to proof by foreman for wages of numerous workmen, see C. W. U. R. 1890, r. 106.

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next before that event (a). Such claims are to rank equally with the other preferential payees; and are to be a first charge on goods of a company distrained within three months before winding-up, and are to be paid at the time and in the manner provided by the Act.

Special provision is made for the wages of miners by the Stannaries Act, 1869, and the Stannaries Act, 1887 (b).

If an officer or servant (c) is engaged at a fixed stipend for a certain term, and a winding-up takes place before its expiration, he will be entitled to prove for the value of an annuity equal to the amount of the salary for the remainder of the term, and in addition he can also claim the pecuniary value of any other benefits which he would have enjoyed under his contract (d). But a deduction will be made in consideration of his liberty to obtain fresh employment, and for such other matters (d), unless a fixed sum is made payable by the contract in the event of his being deprived of his office (e). A claim, however, was not allowed where the words of the contract were that a fixed sum should be paid "if the company *discontinue* to employ him" (f). Where the remuneration was by way of a commission and a fixed salary, compensation for loss of commission which might have been earned during the unexpired part of the term was not allowed in the case of an insurance company, because the engagement left the company free as to the extent of their business, respecting which the officer merely took his chance (g). But a similar claim of an agent of a floor-cloth company (where, however, the payment was by commission only) was allowed (h).

(a) *Ex p. Fox*, 17 Q. B. D. 4.

(b) 32 & 33 Vict. c. 19, s. 26; 50 & 51 Vict. c. 43, ss. 4, 8; s. 10; s. 34; s. 9.

(c) As to a clerk to a promoter of a company, see *Kent Tramways Co.*, 12 Ch. D. 312; *Skegness, &c., Tramways Co.*, *infra*.

(d) *Yelland's Case*, 4 Eq. 350 (rent of house claimed); *Ex p. Clark*, 7 Eq. 550. See *Cope's Case*, 1 Sim. N. S. 54; *Shirreff's Case*, 14 Eq. 417 (manager allowed to prove for amount paid on shares). As to the claim of a sharebroker where a voluntary winding-up prevented him from carrying out his agreement, see *Inchbald v. Western*

Neilgherry Coffee Co., 17 C. B. N. S. 733.

(e) *Ex p. Logan*, 9 Eq. 149. See also *Shirreff's Case*, *supra*.

(f) *Tait's Case* (Alb. Arb.), 16 Sol. J. 46.

(g) *Ex p. Maclure, Re English and Scottish, &c., Insce. Co.*, 5 Ch. 737; see remarks of James, L.J., at p. 740; *Rhodes v. Forwards*, 1 App. Cas. 256. Where the remuneration is to be part of the net profits on certain contracts, see *Stamp's Claim, Re British Columbia, &c., Saw Mill Co.*, 25 L. T. 653.

(h) *Dean and Gilbert's Claim*, 16 L. J. Ch. 474.

Where, by an agreement made before registration of a company, a person was engaged as an officer, and the agreement was confirmed by a resolution of the directors, and the company was subsequently wound up, it was held that the claimant was entitled to remuneration for all the work he had done; but, as a company could not ratify or confirm anything that was done or any contract that was made before it came into existence, a claim for damages must be disallowed (*a*).

Persons who have not acted directly for a company in obtaining a special Act of Parliament, are not entitled to claim directly against the company for the costs incident to obtaining the Act (*b*). Nor can persons claim against the company who do not do work directly for a company in process of formation (*b*).

If a manager or officer who claims to prove for compensation in the winding-up, is appointed liquidator, any remuneration received as liquidator will be set off against the amount of his proof (*c*).

Where an action was brought against a liquidator personally, for wages for work done for the benefit of the estate, an injunction restraining the action was refused (*d*).

The appointment on the application of debenture-holders of a receiver and manager of the business of a company amounts to a dismissal of the servants of the company (*e*).

Contingent debts, &c., and rent.—Although, in a winding-up under the Act of 1862, the 25th rule of the General Order, 1862, provides that the value of such debts and claims as are made admissible to proof by the 158th section (*f*) is to be estimated, so far as possible, according to the value at the date of the order to wind up, yet this rule does not apply where the damages continue to run after the winding-up (*g*). And any liability contingent at

(*a*) *Dale and Plant*, 61 L. T. 206.

(*b*) *Skegness, &c., Tramways Co.*, 41 Ch. D. 215; *Manchester, &c., Tramways Co.* [1893], 2 Ch. 638. See *Brampton, &c., Ry. Co.*, 10 Ch. 177. *Wyatt v. Metropolitan Board of Works*, 11 C. B. N. S. 744.

(*c*) *Shirreff's Case*, *supra*.

(*d*) *Original Hartlepool Collieries Co.*, 51 L. J. Ch. 508. See *ante*, p. 62.

(*e*) *Reid v. Explosives Co.*, 19 Q. B. D. 264; and see *post*, Part VI., Ch. II., p. 480.

(*f*) See *ante*, p. 88.

(*g*) *Ex p. Cambrian Steam Packet Co.*, 6 Eq. 396; *ib.*, 4 Ch. 112; *Great Britain Mutual Assee. Soc.*, 20 Ch. D. 351. See the remarks of Wood, V.C., 6 Eq. 400. See *Kellock's Case*, 3 Ch. 769. As to a running contract, and moneys payable under a concurrent agreement, see *Asphaltic Wood Pavement Co.*, 30 Ch. D. 216. As to the valuation of future and contingent liabilities, see *Hardy v. Fothergill*, 13 App. Cas. 351.

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the date of the commencement of the winding-up, which ripens into a debt during the winding-up, is provable; but previous dividends are not to be thereby disturbed (*a*). Subsequent facts may be given in evidence for the purpose of shewing what the real value was at the date of the winding-up order (*b*).

The lessor of a company is entitled to enter a claim in respect of the full amount of the future rent arising under the lease. So, also, where a lease is assigned, but with the qualification that the lessor cannot receive more than the amount which the company might become liable to pay under the covenant (*c*). The same rule applies where the company is the lessee of land for fourteen years, with a power to determine the lease at the end of seven years on paying the rent and performing the covenants for the seven years, and the winding-up takes place before the end of the seven years, and the lessor may claim in respect of the company's liability as if the lease had been for fourteen years certain (*d*). But a sum equal to a dividend upon the amount at which the future rent was estimated will not be impounded to secure payment of the future rent to the lessor (*e*). And s. 10 of the Judicature Act, 1875, does not, it seems, affect cases of this description where no breach of covenant has taken place (*f*).

A solvent company in voluntary liquidation will be restrained, on the motion of the lessor, from distributing assets among its shareholders without setting aside sufficient assets to provide for future rent and other liabilities

(*a*) *Macfarlane's Claim*, 17 Ch. D. 337 (fire within terms of policy after winding-up order). See s. 10 of the Jud. Act, 1875, and *supra*, p. 88, and s. 37 of the Bankruptcy Act, 1883, *ante*, p. 89; and see C. W. U. R. 1890, r. 105, *post*, p. 356, as to proof of debts not payable at date of winding-up.

(*b*) *Holdich's Case*, 14 Eq. 72, 80.

(*c*) *Haytor Granite Co.*, 1 Ch. 77; *New Oriental Bank* (2) [1895], 1 Ch. 753; *Craig's Claim* [1895], 1 Ch. 267. See *Horsey's Claim*, 5 Eq. 561; *Gartness Iron Co.*, 10 Eq. 412 (Scotch feu duties). But *cf. Telegraph Construction Co.*, 10 Eq. 384, where, however, the company was reducing its capital, and not being wound up. As to an assignee

of a lease and a covenant to indemnify, see *Hardy v. Fothergill*, 13 A. C. 351. As to distress for rent, see *ante*, p. 67; and as to proof for proportionate part of rent, see C. W. U. R. 1890, r. 103, *post*, p. 355.

(*d*) *New Oriental Bank* (2), *supra*.

(*e*) *Horsey's Claim*, *supra*; *Westbourne Grove Drapery Co.*, 5 Ch. D. 248. But see *Oppenheimer v. British, &c., Bank*, 6 Ch. D. 744, where, however, the winding-up was voluntary, and the company seems to have been solvent. And see *Gooch v. London Banking Assoc.*, 32 Ch. D. 41; *Telegraph Construction Co.*, *supra*.

(*f*) *Westbourne Grove Drapery Co.*, *supra*.

under a lease (a). *Quære*, whether this rule does not apply to an insolvent company (b).

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Interest.—Notwithstanding r. 26 of G. O., 1862 (c), which is *ultra vires* and invalid (d), interest cannot be allowed, in a winding-up under the Act of 1862, on a debt not bearing interest, and such a creditor must shew his right to it (e). But in all cases where it could be recovered as damages at law under 3 & 4 Wm. 4, c. 42, s. 28, interest will be paid (f). And it seems that such a demand may be made as will found a claim to interest under this last-mentioned statute, either in a compulsory or voluntary winding-up (g). It does not appear to be clear where and from whom the demand should be made (g).

An order to wind up a company fixes the right of its creditors, and nullifies, as between them, all contracts for interest (h). Therefore, where a company is insolvent (i), creditors whose debts carry interest are entitled to dividends only upon what was due for principal and interest at the commencement of the winding-up (k); and, in the case of a winding-up under supervision, at the date of the resolution to wind up voluntarily (l). So a company is freed by

(a) *Lord Elphinstone v. Monkland Iron Co.*, 11 App. Cas. 332; *Gooch v. London Banking Assoc.*, 32 Ch. D. 41; *Zuccani v. Nacupai Gold Co.*, 61 L. T. 176. See *Kearns v. Leaf*, 1 H. & M. 681; *King v. Malcott*, 9 Hare, 692.

(b) *Cf. Haytor Granite Co.*, and cases *supra*.

(c) See the rule in Appendix.

(d) *Ex p. Greenwood, Re Hadfield Cask Co.*, 8 L. T. 846; 11 W. R. 971; *Herefordshire Banking Co.*, 4 Eq. 250; *East of England Banking Co.*, 6 Eq. 368; *ib.* 4 Ch. 14.

(e) *Ib.*, and see *Peruvian Guano Co.*, *Ex p. Kemp* [1894], 3 Ch. 690.

(f) *Times Ass. Co.'s Case*, 2 H. & M. 723; *Stocken's Case*, *Blakely Ordnance Co.*, 3 Ch. 412. As to a building society where interest is payable to withdrawing members "provided the funds permit," see *Blackburn, &c., Bldg. Soc.*, W. N. 1886, p. 22; and see now as to proof for interest, C. W. U. R., 104, *post*, p. 355.

(g) *East of England Banking Co.*, *supra*, where the winding-up E.W.

was under supervision, and the demand upon the liquidator was held sufficient; and *Herefordshire Banking Co.*, *supra*, where the demand upon the liquidator in a winding-up by the Court was held not sufficient.

(h) *Hughes' Claim*, 13 Eq. 623. As to cases to which s. 10 of the Jud. Act, 1875, does not apply, see *Warrant Finance Co.'s Case*, 10 Eq. 11; *ib.* 5 Ch. 86; *ib.* 5 Ch. 88, and *infra*. See this case as to a dividend being attributed to the interest first and then to the principal.

(i) As to when a company is considered to be insolvent, see *Milan Tramways Co.*, *per Selborne*, C., 25 Ch. D. at p. 591.

(k) *Warrant Finance Co.'s Case*, L. R. 4 Ch. 643; *Re London, &c., Hotels Co., Quartermaine's Case* [1892], 1 Ch. 639. As to annuitants and insurance companies, see *Sullivan and Smythe's Case* (Eur. Arb.), L. T. 50, 53.

(l) *Ex p. Colborne and Strawbridge, Re Imperial Land Co. of*

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the winding-up order from a contract to indemnify a surety against the payment of interest; but he may take a claim into chambers for the estimated value of his right to indemnity at the time when the order was made (a). The rule laid down in *Warrant Finance Co.'s Case* (b) was not merely a settlement of the practice for the future, but a declaration of the law as it then stood (c).

But, in cases to which s. 10 of the Judicature Act of 1875 does not apply (d), the above rule does not prevent a creditor who has a right of **proof for the same debt** against the estate of **two companies** in liquidation from receiving dividends from both estates until the full amount of his debt and interest has been satisfied (e). And, in cases to which s. 10 of the Judicature Act of 1875 does not apply (d), a creditor who holds a security is not prevented from receiving dividends to the full amount of the principal, and at the same time realizing his security until the full amount of principal and interest has been satisfied (f).

When the **company** proves to be **solvent**, and in the event of there being a surplus, a claim for interest subsequent to the commencement of the winding-up, on debts carrying interest, will be allowed; in which case the dividends will be treated as applicable, first, in payment of interest, and then in reduction of principal (g).

A trustee for a company, who pays money for it under a contract by which he was legally bound to make such payment, is in no worse position than a stranger who makes advances; and is entitled in the winding-up to interest at £5 per cent. on his debt, although the debt which he paid carried interest at £4 per cent. only (h).

If a debt bears interest, say, at £6 per cent., and the creditor recovers judgment for his principal and interest, he will be entitled to prove only for interest at £4 per cent. after the date of the judgment, as the original debt

Marseilles, 11 Eq. 478, 498. See this case and *East of England Banking Co.*, 4 Ch. 14, as to a voluntary winding-up not stopping interest.

(a) *Hughes' Claim*, 13 Eq. 623. As to interest payable to a trustee, see *Sargood's Claim*, 15 Eq. 43.

(b) 4 Ch. 643.

(c) *Ebbw Vale Co.'s Case*, 5 Ch. 112.

(d) See the section, *supra*.

(e) *Warrant Finance Co.'s Case*, 5 Ch. 86.

(f) *Warrant Finance Co.'s Case* (No. 2), 5 Ch. 88. Cf. *Blakely Ordnance Co.*, 8 Eq. 244. See *Ex p. Findlay*, 17 Ch. D. 334. But see s. 10 of Jud. Act, 1875, under "Secured Creditors," *infra*.

(g) *Warrant Finance Co.'s Case*, 4 Ch. 643. See *supra*. As to an annuitant in an insurance company, see *Woodcock's Case* (Alb. Arb.), 16 Sol. J. 517.

(h) *Beulah Park Estate*, 15 Eq. 43.

is merged in the judgment (a). But this rule does not apply where there is an express covenant to continue payment of interest so long as the security should continue (b).

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Secured creditors.—A “secured creditor” is a person holding a mortgage, charge, or lien on the company’s property, or any part thereof, as security for a debt due to him from the company (c). A judgment creditor who has obtained execution before the commencement of the winding-up is secured (d).

As to any distinction between the rights of mortgagees of specific property and those of holders of debentures, which cover all the assets and undertaking of a company, see the case cited below (e).

Under any circumstances, the secured creditor may apply to the Court for liberty to bring or proceed with a foreclosure action, or to realize his security. If he has a power of sale, he may sell, either with or without the liquidator’s concurrence. In some cases, application is made in the winding-up for a declaration of the secured creditors’ rights, and for a direction to the liquidator to realize the securities, and pay them (f).

If he realizes his security in a foreclosure action a mortgagee may set off profits accrued upon the property, since the winding-up order against interest accrued during the same period, but is not allowed to apply any part of the proceeds of sale in reducing such interest so as to

(a) *Ex p. Oriental Financial Ass., European Central Ry. Co.*, 4 Ch. D. 33, and case there cited, p. 34; *Ex p. Fewings*, 25 Ch. D. 338. As to interest on costs running from the date of the judgment, and not from the date of the taxing master’s certificate, see *London Wharfing, &c., Co.*, 54 L. J. Ch. 1137.

(b) *Popple v. Sylvester*, 22 Ch. D. 98; *Ex p. Fewings*, *supra*.

(c) S. 168 of the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52); *Ex p. Joselyne*, 8 Ch. D. 327; *Ex p. Nelson*, 14 Ch. D. 41; *Re Hopkins*, 18 Ch. D. 370.

(d) See s. 45 of Bankruptcy Act, 1883. See *Ex p. Evans*, 13 Ch. D. 252; *Jones v. Parcell*, 11 Q. B. D. 430; *Ex p. Williams*, 7 Ch. 314

(*fi. fa.*, seizure necessary); *Ex p. Joselyne*, 8 Ch. D. 327; *Lowe v. Blackmore*, L. R. 10 Q. B. 485. See *Smith v. Morgan*, 5 C. P. D. 337; *Re Maggi, Winchouse v. Winchouse*, 20 Ch. D. 545; *Stanhope Silkstone Co.*, 11 Ch. D. 160 (garnishee order served). See as to bills of exchange, *Ex p. Banner*, 9 Ch. 379; *Ex p. Bouchard*, 12 Ch. D. 26; *Ex p. Brett*, 6 Ch. 838; *Ex p. Ashworth*, 18 Eq. 705; *Ex p. Schofield*, 12 Ch. D. 337.

(e) *Pound, Son, & Hutchins*, 42 Ch. D. 402.

(f) As to costs of realization, see *post*, p. 252. As to an action for redemption by a member of a loan society in default after winding-up, see *Cordingley v. Alliance Soc.*, W. N. 1887, p. 220.

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increase the sum for which he may prove, if there is a deficiency in his security (a).

As to bringing actions after a winding-up order, see Chapter V.

Rule as to proof.—To a winding-up of an insolvent company commenced previous to the 1st November, 1875, the rule in *Kellock's Case* (b) applies. The rule in *Kellock's Case*, however, does not apply when the company is in the position of mortgagees (c). But in all such windings-up commenced after the above date, the 10th section of the Judicature Act, 1875, provides that in the winding-up of any company under the Acts of 1862 and 1867, whose assets may prove to be insufficient for the payment of its debts and liabilities, and the costs of the winding-up, the same rules shall prevail and be observed as to the respective rights of secured and unsecured creditors (d), and as to debts and liabilities provable, as may be in force for the time being under the law of bankruptcy, with respect to the estates of persons adjudged bankrupt.

See the Bankruptcy Rules, *ante*, pp. 89–91.

A secured creditor, therefore, can (1), if he gives up his security on the property of the company (e), prove for the whole amount of his debt, or (2), if he estimates its value, he may prove for the balance of his debt, or (3) any deficiency after deducting the value of his security or realizing it where there is power to do so (f). He may, if he so desire, have his security realized in the winding-up. A creditor holding a security can only be redeemed on

(a) *Re London, &c., Hotels Co., Quartermaine's Case* [1892], 1 Ch. 639.

(b) 3 Ch. 769.

(c) *Coupland's Claim*, 5 Ch. 167; *Leech's Claim*, 6 Ch. 388; *Banner v. Johnston*, 5 L. R. H. L. 157.

(d) As to a judgment creditor, see *infra*.

(e) Not any other securities.

(f) See *Florence Land Co., Ex p. Anglo-Italian Bank*, W. N. 1884, p. 112, as to proof by secured creditors, and appropriation of third party payments. As to proving for balance, see *Oriental Commercial Bank, Ex p. Maxondoff*, 6 Eq. 582; *Barnell's Banking Co., Forwood's Claim*, 5 Ch. 18. As to right of secured creditor not to regard securities which have been realized

by him between the sending in his claim and its being adjudicated upon, see *Kellock's Case, supra*; *London, Bombay, &c., Bank*, 9 Ch. 686. As to valuing his security and the effect of proof being rejected, and as to Bankruptcy Rules as to assessment of securities applying, see *Moor v. Anglo-Italian Bank*, 10 Ch. D. 681; *Re Kit-Hill Tunnel*, 16 Ch. D. 590; *Re Hopkins*, 18 Ch. D. 370; *Re Hopkins* (2), 44 L. T. 773; *Williams v. Hopkins*, 52 L. J. Ch. 736, and Bankruptcy Rules. As to liquidator making reserve for deficiency, and as to what particulars must be furnished in a claim by secured creditors, see *Ex p. Good, Re Lee*, 14 Ch. D. 82; *Ex p. Barnard, Re Gill*, 46 L. T. 824.

payment of principal and interest up to the time of payment, with his proper costs (a).

For the Bankruptcy Rules with respect to secured creditors, and the power of the liquidator to redeem a security after a value has been placed upon it, or to insist on a sale, see s. 39 of the Bankruptcy Act, 1883.

Until the certificate of debts is made, a secured creditor has a *locus pœnitentiæ* (b).

Secured creditors are not bound to make the election required in bankruptcy until the time arrives for proof of debts (c). See first schedule to Act of 1890, *post*, p. 300.

The 10th section of the Judicature Act, 1875, refers only to a company unable to pay its debts, but it must be treated as applicable to any company in liquidation until it is shewn that the assets are sufficient for payment of the debts in full (a).

There has been considerable difference of opinion as to what is the precise meaning of the above-mentioned section, and as to the extent to which the rules of bankruptcy are introduced (e). It has, however, been held that this section does not involve the proposition that, whereas under certain circumstances a security is avoided in bankruptcy, therefore in the winding-up of a company a security is to be avoided under similar circumstances; but that the intention of the legislature was simply to introduce the bankruptcy rule that a secured creditor could only prove for the balance of his debt after deducting the value of his security, in order to do away with a well-known difference in the law as to proof by a secured creditor in administration by the Court of Chancery, and in bankruptcy (f).

S. 10 of the Judicature Act, 1875, imports any additional rules in bankruptcy, or any alterations which may be made from time to time (g).

(a) *Warrant Finance Co.'s Case*, 10 Eq. 11, cited, *supra*.

(b) *Re Hopkins*, 18 Ch. D. 370, at p. 378.

(c) *Caermarthen, &c., Coal Co.*, 24 W. R. 109.

(d) *Milan Tramways Co.*, 25 Ch. D. 587, *ante*, p. 97.

(e) *Re Withernsea Brickworks*, 16 Ch. D. 337, overruling *Re Printing, &c., Registering Co.*, 8 Ch. D. 535, and approving *Re Richards & Co.*, 11 Ch. D. 676. See also *Mersey Steel and Iron Co. v. Naylor*, 9 Q. B. D. at p. 668, affirmed by

H. L. 9 A. C. 434; *Re Hopkins*, 18 Ch. D. 370; *Re Maggi, Winehouse v. Winehouse*, 20 Ch. D. 545; *Railway Steel, &c., Co.*, 8 Ch. D. 183; *Moor v. Anglo-Italian Bank*, 10 Ch. D. 681; *Milan Tramways Co.*, *supra*.

(f) *Re Withernsea Brickworks*, 16 Ch. D. 337, 341. As to the mutual credits section of the Bankruptcy Act, see *Campbell's Case*, 4 Ch. D. 470, 475.

(g) *Mersey Steel and Iron Co. v. Naylor*, *supra*.

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S. 10 of the Judicature Act, 1875, does not introduce the provision of s. 32 of the Bankruptcy Act, 1869 (*a*), that all debts (with certain exceptions) are to be paid *pari passu* (*b*). It affects only the rights of the class of secured creditors as conflicting with those of the class of unsecured creditors; it does not affect the rights *inter se* of members of those classes (*b*). It is not intended to enlarge the assets of an insolvent estate, but only to vary the rights of the persons entitled to the assets; and, therefore, it does not apply the rules of bankruptcy so as to make an unregistered bill of sale void as against the unsecured creditors of an insolvent company (*c*).

As to the rights of mortgagees of real estate of a company ordered to be wound up, who have contracted for the sale of the mortgaged property, and received a deposit, and as to form of order, see case below (*d*).

The doctrine of *Ex parte Waring* is as follows:—Where the estates of both drawer and acceptor of a bill of exchange are insolvent and in course of judicial administration (*e*), and as between such parties, funds or securities have been especially set aside to meet the bill, the holder, though himself no party to the arrangement, may, if he has a right of proof against both parties (*f*), demand the appropriation of such funds to meet the acceptance, or may realize the securities, and prove for the balance (*g*). The rule applies, even though the party sending remittances, &c., was not a party to the bill, as drawer or endorser, so long as the bill be drawn in respect of a transaction for which he was liable (*h*). It is, however, subject to the rights of joint creditors, where the drawer and acceptor of the bills are two firms who have been engaged in a joint transaction (*i*).

(*a*) See now s. 40 of the Act of 1883, 46 & 47 Vict. c. 52.

(*b*) *Re Maggi, Winehouse v. Winehouse*, 20 Ch. D. 545.

(*c*) *Re Count Epineuil, Tadman v. Epineuil*, 20 Ch. D. 217. See *Stockton Iron Co.*, 10 Ch. D. 335; *Re Knott*, 7 Ch. D. 549, n.; *Crumlin Viaduct Works Co.*, 11 Ch. D. 755. See *infra*, as to bills of sale and registration of debentures.

(*d*) *Oxford and Canterbury Hall Co.*, 5 Ch. 433.

(*e*) *Ex p. Gomez, Re Yglesias*, 10 Ch. 639; *Ex p. General South American Co., Re Yglesias*, 10 Ch. 635.

(*f*) *Vaughan v. Halliday*, 9 Ch. 561.

(*g*) *Ex p. Waring, Re Brickwood*, 19 Ves. 344; *City Bank v. Luckie*, 5 Ch. 778. Where rule was held inapplicable, see *Ex p. Banner, Re Tappenbeck*, 2 Ch. D. 278; *Ex p. Lambton, Re Lindsay*, 10 Ch. 405. The doctrine of *Ex p. Waring* does not apply to Scotland. *Royal Bank of Scotland v. Commercial Bank of Scotland*, 7 App. Cas. 366; *Ex p. Dever, Re Suse* (No. 2), 14 Q. B. D. 611.

(*h*) *Ex p. Smart, Re Richardson*, 8 Ch. 220.

(*i*) *Ex p. Dewhurst, Re Leggatt*,

The above principle only applies when the acceptor or drawer is a company which has been ordered to be wound up, where it is shewn that the company is actually insolvent (*a*). The proof must be reduced by the amounts received by the bill-holders from the securities, and any dividends received on the excess of an original over a reduced proof must be refunded (*b*).

A **vendor's lien** for unpaid purchase money in respect of land (*c*), or of a patent (*d*), and a maritime lien (*e*), or an unpaid vendor's right to stop goods *in transitu* (*e*), can be enforced in a winding-up.

Where a company deposited title-deeds with a bank "as collateral security for bills under discount," and at the time the company was wound up they were indebted to the bank in respect of other bills than those actually discounted for them, and the securities realized more than was sufficient to cover the latter bills, it was held that the bank was entitled to hold the balance of the proceeds upon the sale of the securities, to meet the whole amount due to them by the company (*f*).

If a creditor, believing himself to be fully secured, does not take the trouble to prove for his debt in the winding-up, and has not assessed his security at all, it has been held, under such circumstances, that he was not prevented, by the operation of s. 10 of the Judicature Act, 1885, and r. 101 of the Bankruptcy Rules, 1870 (*g*), from coming in and proving for the unsecured balance of his debt, provided he did not disturb any past dividend (*h*).

The rule in bankruptcy that there cannot be a **double proof** against the same estate in respect of the same debt, applies in cases of winding-up under the present Acts (*i*).

Where a secured creditor under an ordinary agreement

8 Ch. 965; Baldwin on Bankruptcy.

(*a*) *New Zealand Banking Corp., Hickie's Case*, 4 Eq. 226. *Sed quære*, and see cases Lindley (5th ed.), p. 727. See *Milan Tramways Co., supra*.

(*b*) *Barned's Banking Co., Ex p. Joint Stock Discount Co.*, 10 Ch. 198.

(*c*) But see *Brentwood Brick Co.*, 4 Ch. D. 562; *Hamilton's Windsor Ironworks*, 12 Ch. D. 707. See further, as to lien, *ante*, p. 78.

(*d*) *Gore & Durant's Case*, 2 Eq. 349.

(*e*) *Australian Navigation Co.*,

20 Eq. 325; *Rio Grande do Sul Steam Co.*, 5 Ch. D. 282.

(*f*) *General Provident Ass. Co., Ex p. National Bank*, 14 Eq. 507.

(*g*) See now the Bankruptcy Rules, 1883, as to proof.

(*h*) *Re Kit Hill Tunnel*, 16 Ch. D. 590. See also *Ex p. Good, Re Lee*, 14 Ch. D. 82. See *supra*, p. 91, as to delay.

(*i*) *Re Oriental Commercial Bank, Ex p. European Bank* (1871), 12 Eq. 501; *ib.*, 7 Ch. 99. As to proof by a creditor holding the company's debentures as a collateral security, see *Blakely Ordnance Co.*, 8 Eq. 244.

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of suretyship has proved in the winding-up and obtained a dividend, and the surety has also been sued in an action and has had to pay the amount to him, see the case below (a).

The effect of s. 43 of the Act, requiring a register of mortgages to be kept, and imposing a penalty for non-registration, is not to make an **unregistered charge** in favour of a director, or other officer of the company, void as against the general creditors (b).

As to priority with other debts where a mortgage is not duly registered in accordance with s. 43, see the case below (c).

As to the priorities of incumbrancers on a sum found due to a creditor, and remaining in the hands of the liquidator, see the case below (d).

A company limited by shares may **mortgage its uncalled capital** if authorized to do so by its memorandum and articles of association (e); such a mortgage, when made by the directors while the company is a going concern, is effectual upon calls made in the winding-up, and entitles the mortgagee to be paid out of such calls in priority to the unsecured creditors of the company (e). So also if the mortgagee is a shareholder (e). The mortgagee can foreclose against the uncalled capital (f).

Debenture-holders.—For remedies of debenture-holders, see *post*, Part VI., p. 467.

It is scarcely within the scope of this work to discuss the question of the nature and effect of instruments issued by a company in pursuance of their borrowing powers; this matter has been dealt with in the cases mentioned below (g). But it may be stated generally that

(a) *Gray v. Seckham, Re Getynog, &c., Colliery Co.* (1872), 7 Ch. 680.

(b) *Wright v. Horton*, 12 App. Cas. 371.

(c) *Underbank Mills Cotton, &c., Co.*, 31 Ch. D. 226. See *General Horticultural Co., Whitehouse's Claim*, 53 L. T. 699.

(d) *General Horticultural Co., Ex p. Whitehouse*, 32 Ch. D. 512.

(e) *Pyle Works Co.*, 44 Ch. D. 534; *Phoenix Bessemer Steel Co.*, 44 L. J. Ch. 683; *Newton v. Anglo-Australian, &c., Co. (debenture-holders of)* [1895], A. C. 244. See Act of 1879, and consider distinc-

tion where money is only to be called up in a winding-up. See *Ex p. Stanley*, 4 De G. J. & S. 407; *Black & Co.'s Case*, 8 Ch. 254; and in *Re Whitehouse & Co.*, 9 Ch. D. 595. See *Pyle Works Co. (No. 2)* [1891], 1 Ch. 173.

(f) *Sadler v. Worley* [1894], 2 Ch. 170, the order can be made in chambers on originating summons; *Oldrey v. Union Works, Ltd.*, W. N. (1895), p. 77.

(g) *Athenæum Life Assce. Soc. v. Pooley*, 3 De G. & J. 294; *Ex p. Chorley*, 11 Eq. 157; *Ex p. Colborne and Strawbridge*, 11 Eq. 478, and the numerous cases there

the use of any particular words has no defined effect, for each instrument must be construed as a whole, and with reference to the powers of the company by which it is issued (a). To constitute a debenture, it is not necessary that there should be a series of debentures (b). Any document which either creates a debt or acknowledges it, is a "debenture." An agreement to issue debentures has been held to be in effect a debenture (c). Thus, an agreement with a company to pay a sum, and charging property of the company with the repayment, and with a further promise to execute a legal mortgage and to issue debentures to be secured on all the property of the company, is itself a debenture (d). Any document which on its face purports to charge the property of the company to the holder is a debenture; and anything which amounts to an equitable contract will be carried into effect to give a charge (e). But a memorandum of deposit of title-deeds as security for a current account, in which there was no acknowledgment of any specific debt, and except so far as implied by an agreement to execute a legal mortgage no promise to pay, has been held not a debenture (f).

The authorities go to this, that where there is a distinct promise held out by a company, informing all the world that they will pay to the order of the person named, it is not competent for that company afterwards to set up equities of their own, and say that because the person who makes the order is indebted to them they will not pay. And therefore an indorsee or a transferee of such an instrument for value can prove free from equities (g). If, also, a

reviewed; *Agra and Masterman's Bank*, 2 Ch. 391; *Gen. Estates Co.*, 3 Ch. 758; *Blakely Ordnance Co.*, 3 Ch. 154. But *cf.* *Natal Investment Co.*, 3 Ch. 355; *Brunton's Claim*, 19 Eq. 302. See also *Higgs v. Northern Assam Tea Co.*, L. R. 4 Ex. 387; *Crouch v. Credit Foncier of England*, L. R. 8 Q. B. 374; *Hamilton's Windsor Ironworks, Ex p. Pitman*, 12 Ch. D. 707.

(a) *Florence Land and Works Co.*, 10 Ch. D. 520.

(b) *Edmonds v. Blaina Furnaces Co.*, *Beesley v. Same*, 36 Ch. D. 215; *Levy v. Abercorris Slate Co.*, 37 Ch. D. 260. See *Topham v. Greenside Glazed Firebrick Co.*, 37 Ch. D. 281, where it seems memorandum was not a "debenture."

(c) *Levy v. Abercorris Slate Co.*,

supra; and see *Queensland Land & Coal Co.*, *Davis v. Martin* [1894], 3 Ch. 181.

(d) *Levy v. Abercorris Slate Co.*, *supra*; *Edmonds v. Blaina Furnaces Co.*, *supra*; *Marine Mansions Co.*, 4 Eq. 601.

(e) *Ross v. Army & Navy Hotel Co.*, 34 Ch. D. 43; *Queensland Land & Coal Co.*, *Davis v. Martin*, *supra*; *Brocklehurst v. Railway Printing Co.*, W. N. 1884, p. 70. See *Jenkinson v. Brandley Mining Co.*, 19 Q. B. D. 568.

(f) *Topham v. Greenside Firebrick Co.*, *supra*. As to debentures in two series not secured on any specific property, see *James v. Boythorpe Colliery Co.*, 2 Meg. 55.

(g) *Per Wood, L.J.*, in *Gen. Estates Co.*, 3 Ch. 758, 762. *Ex p.*

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company has treated a transferee as a creditor, or has done anything to cause him to act in the belief that he would be a creditor, it cannot avail itself of any set-off against the transferor as against the transferee (*a*). But where the debt to the company is owing before the transferees complete their title to the debentures by giving notice of or registering the transfer, set-off is allowed (*b*), even though the debt, though then due, is not payable till a later date (*c*). Where a commercial company mortgages all its undertaking and property to secure debenture-holders, and subsequently assigns to another person a specific sum of money about to become due to it, in order to secure advances for payment of wages and carrying on business, the claim of the latter in the winding-up on the specific sum is prior to the general claim of the former (*d*).

A debenture charging "the undertaking" (*e*), or the "undertaking and property" (*f*), or "all the estate, property and effects" (*g*), of the company, creates a charge upon the property of the company, as it exists at the date of the winding-up (*h*). Before an action is brought to enforce the security on the commencement of a winding-up, the company can dispose of its property by sale or mortgage while carrying on its business in the ordinary course (*i*). As against the going company, the debenture-holders may obtain the appointment of a receiver (*k*). It

Colborne and Strawbridge, supra;
45 & 46 Vict. c. 61, s. 91, sub-s. 2.

Cf. Natal Investment Co., supra.

(*a*) *Brunton's Claim, supra*; *Agra & Masterman's Bank, supra.*

(*b*) *Christie v. Taunton, &c., Co.*
[1893], 2 Ch. 175.

(*c*) *Ibid.*

(*d*) *Hamilton's Windsor Ironworks, Ex p. Pitman & Edwards*, 12 Ch. D. 707; *Wheatley v. Silkstone and Haigh Moor Coal Co.*, 29 Ch. D. 715. As to the preference of debenture-holders, where no possession has been taken of property, over ordinary trade creditors, see *Clarke v. West Calder Oil Co.*, 9 C. of S. Cas. 1017 (Sc.).

(*e*) *Panama Mail Co.*, 5 Ch. 318.

(*f*) *Marine Mansions Co.*, 4 Eq. 601.

(*g*) *Florence Land Co., Ex p. Moor*, 10 Ch. D. 530; and see *Hodson v. Tea Co.*, 14 Ch. D. 859 ("stock, plant, chattels, and

effects").

(*h*) *Panama Mail Co., supra*; *Marine Mansions Co., supra*; *Florence Land Co., Ex p. Moor, supra*; and see *Hodson v. Tea Co., supra*; *Colonial Trusts Corp., Ex p. Bradshaw*, 15 Ch. D. 465, 472. See also *Re Horne and Hellard*, 29 Ch. D. 736, where *Florence Land Co.* and *Colonial Trusts Corp.* were distinguished.

(*i*) *Florence Land Co., Ex p. Moor, supra*; *Moor v. Anglo-Italian Bank*, 10 Ch. D. 681, 687; *Hamilton's Windsor Ironworks, Ex p. Pitman*, 12 Ch. D. 707, 710, 712, 714. See the last two cases as to such a mortgage having priority over the charge. But as to sale of the whole assets, see *Hubbuck v. Helms*, 56 L. J. Ch. 536.

(*k*) *Panama Mail Co., supra*; *Colonial Trusts Corp., Ex p. Bradshaw, supra*. See as to this, Part VI., Chap. I., *post*, p. 471.

seems that the right of debenture-holders who have a charge upon the undertaking of a company to apply to the Court to realize their security arises if the company parts with the whole, or substantially the whole, of its undertaking and assets otherwise than in the ordinary course of business, or whenever the company ceases to be a going concern (*a*). The moment the winding-up commences, the money secured by such debenture charging the property of the company becomes payable, and the debenture a security enforceable upon all the assets of the company as they exist at the date of the winding-up (*b*).

Quære, whether s. 10 of the Judicature Act, 1875, has affected the power of a company to charge after-acquired property as against its other creditors (*c*).

As to whether debentures to bearer which have been sealed but not delivered, have been issued before the winding-up, see the case below (*d*).

Bills of sale given by joint stock companies are within the Bills of Sale Act, 1882 (*e*). Sect. 10 of the Judicature Act, 1875 (*f*), does not apply the rules of bankruptcy so as to make an unregistered bill of sale void as against the unsecured creditors of an insolvent company (*g*). The Bills of Sale Acts, 1878 and 1882, do not apply to the mortgages, charges, or debentures of any incorporated company, for the registration of which other provisions have been made by the Companies Clauses Act, 1845, or the Companies Act, 1862 (*h*). There is no such provision for registration of debentures of Provident and Industrial Societies; they are therefore void unless registered and in the form required by the Bills of Sale Acts (*i*).

In a proper case, or where the amount due to holders of debentures, constituting a first charge on all the assets, exceeds their value, application is sometimes made that the liquidator be at liberty to give possession of property, or to transfer the assets, to a trustee for the debenture-holders.

As to enforcing securities by mortgage-debenture holders, see *post*, Part VI., Chap. I.

(*a*) *Hubbuck v. Helms*, *supra*.

(*b*) *Wallace v. Universal Automatic, &c., Co.* [1894], 2 Ch. 547, approving *Hodson v. Teu Co.*, *supra*.

(*c*) *Florence Land Co.*, *supra*.

(*d*) *Mowatt v. Castle Steel, &c., Co.*, 34 Ch. D. 58.

(*e*) 45 & 46 Vict. c. 43; *Cunningham & Co.*, 28 Ch. D. 682.

(*f*) As to this, see *ante*, p. 88.

(*g*) *Re Count Epineuil, Tadman v. Epineuil*, 20 Ch. D. 217.

(*h*) *Standard Manufacturing Co.* [1891], Ch. 627; 45 & 46 Vict. c. 43, s. 17; *Read v. Joannon*, 25 Q. B. D. 300.

(*i*) *Great Northern Railway Co. v. Coal Co-operative Association* [1896], 1 Ch. 187.

① In *Wallburg's Case* (Europ. Arbitration) Oct. 22 1872 Lord Westbury strongly disapproved of the decision in *Bell's Case* and said (17 Sol. Jour. at p. 70) that *Bell's Case* was decided on principles utterly foreign to those which govern the act -

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Policy-holders and annuitants.—When a life insurance company is wound up, the liquidator must ascertain the value of all policies and annuities appearing in the books of the company, and give notice to the holders of such policies or annuities, who will be bound by the valuation unless they dispute it within the prescribed time (a).

A holder of a current life-policy, or an annuitant, is entitled to prove for the estimated value of the policy or annuity (b).

Although premiums due between the presentation and the order must be paid before the policy can be received for valuation (c), yet the policy is not avoided by non-payment of premiums after the presentation of the petition on which a winding-up order is subsequently made (d). The time as from which the valuation of an annuity or a policy will be made is the date of the winding-up order (e). But non-payment of premiums which had become due before the presentation of the petition will avoid the policy, unless at that time there were no proper means open to the policy-holder of making the payment (f).

As to priority between policy-holders, see *McIver's Claim* (g).

Holders of annuities granted by insurance companies are creditors of the company from the day when the annuity begins to run. The liability of the company may be limited by its constitution or the terms of the annuity deed; and whether the annuity is a secured debt or not depends on like considerations.

The difference of opinion which existed as to the proper method of valuing current policies of life insurance (h) has now been settled by the legislature (i), which has in

(a) See L. A. C. Act, 1872, schedule.

(b) *Hunt's Annuity Case*, Re *English and Irish Church, &c.*, Ass. Soc., 1 H & M. 79. See *Wyatt's Case* (Alb. Arb.), Reil. 42. As to policy-holder not being a secured creditor, see *March v. Att.-Gen.* 5 Beav. 433. The rights of policy-holders and annuitants in incorporated proprietary companies, incorporated mutual companies, and unincorporated companies, will be found clearly stated in *Lindley*, 737 (5th ed.).

(c) *Wallburg's Case* (Eur. Arb.), L. T. 50, 1872, 103.

(d) *Cook's Policy*, 9 Eq. 703

Lancaster's Case, 14 Eq. 72 n. See 1 Ch. D. 307.

(e) *Lancaster's Case*, *supra*. See this case as to how the value of the annuity is calculated; and see now s. 10 of Judicature Act, 1875, ante, p. 88. See *Holdich's Case*, 14 Eq. 72, 80. See *Albert Life Ass. Co.*, 9 Eq. 706. But see *Macfarlane's Claim*, *infra*, 17 Ch. D. 3.

(f) *Conquest's Case* (Eur. Arb.), L. T. 67, 121.

(g) 5 Ch. 424. (i)

(h) *Bell's Case*, 9 Eq. 706; *Lancaster's Case*, 14 Eq. 72; Alb. Arb. Reil. 76; *Holdich's Case*, *ib.*, p. 684 inq.

(i) 35 & 36 Vict. c. 41, s. 5.

17 Sol. J. (1872)
22 full report
at p. 69 &c.

(*See p. 71*)
illustration of an insured estate "Lord Westbury"
also approved and followed *Lancaster's Case* where
Lord Cairns had disapproved of *Bell's Case*. In *People*

*See ante this. (1879) 8 Dr. 47 ; 8 Ins. L. J. 859 the Dr. 47. And
 of appeals followed Lancaster's Case.
 Appeal from statute or express or custom of a life ins. Co.
 has no value before the policy-holders. Honour 109
 Life of U.S. (1900) Ch. 852 at 854-5 per Buckley.*

substance adopted the rule in *Lancaster's Case* (a). The Act does not apply to companies where the commencement of the winding-up is before the 6th August, 1872, unless the Court having cognizance of the winding-up so order; which order that Court is empowered to make if it think expedient so to do, on the application of any person interested in the winding-up. But the rule does not apply where, under the contract of assurance, a stated sum is payable on the policy at the winding-up (b).

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Under the present law, therefore, in the winding-up of an insurance company—(1) matured claims or policies are valued at the amount, including accrued bonus, which was payable on them at maturity; (2) immature claims are valued in accordance with the first schedule of the Life Assurance Companies Act, 1872 (c); annuity contracts are valued under the second schedule of the same Act (c).

When a policy-holder or annuitant of one insurance company accepts an amalgamation of his company with another company, he can only claim on such other company as if he had originally obtained policies or annuities from that company (d).

When a company granted an annuity with a right to re-purchase the same for £6,500 on giving six months' notice to the grantees; and the company was subsequently wound up; but at the date of the winding-up no notice of intention to re-purchase had been given, and none was subsequently given by the liquidator, it was held that the proof must be confined to the sum of £6,500 (e).

In the winding-up of an insurance company, the important questions for consideration are—

(1.) The number of matured claims or contracts on which a present liability exists.

(2.) The number of immature claims whereon the liability is still contingent.

(a) See note (e), *supra*.

(b) *British Imperial Assce. Corp.*, 47 L. J. Ch. 318.

(c) As to the subsequent death of the assured after the date of the winding-up order, but before proof, and the time for sending in claims, and his right to full payment, see *Albert Life Assce. Co.*, 9 Eq. 706, decided before the Jud. Act, 1875; but see now s. 10 of that Act, *ante*, p. 88, and s. 37 of the Bankruptcy Act, 1883, *ante*, p. 89, and *Macfarlane's Claim*,

17 Ch. D. 337. And *Great Britain Mutual Life Ass. Soc.*, 20 Ch. D. 351 (a case of reduction of contracts).

(d) *Indemnity's Case*, Reilly, 33, 16 Sol. J. 141 (Alb. Arb.). But see also *Sovereign Life Assce. Co. v. Dodd* [1892], 2 Q. B. 573, as to his right of set-off where he has borrowed money from the company on his policies.

(e) *The British Nation Life Assurance Association*, 27 W. R. 443.

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(3.) Whether all claims are payable out of the same funds.

(4.) If not, whether any claims are secured or come in only with the claims of general creditors (*a*).

Claims on contracts.—If the performance of a contract becomes impossible on account of the company being wound up, the person with whom the contract was made (*b*) can prove for the damages consequent upon its non-performance (*c*). But a claim for damages cannot be allowed merely on the ground that the winding-up constituted in itself a breach of contract, inasmuch as permission might be given to the liquidator under the winding-up to perform the contract (*d*).

If a person has entered into an agreement to place the shares of a company which is wound up, he can prove for damages caused by the winding-up and his inability to place shares in consequence (*e*).

Proof will be allowed on a cross claim arising under a contract under such circumstances as the following: where a company contracted to do particular work, and keep it in repair for two years, and if, before the expiration of the two years, B., the other party to the contract, should give them notice, the company were to keep the work in repair for fifteen years, and before the two years had expired, or any notice had been given, the company was ordered to be wound up; it was held that B. might prove for the breach of the contract to repair for fifteen years (*f*).

Where an action was brought against a company to recover an instalment of a debt alleged to be due under an agreement the existence of which was denied by the

(*a*) See Porter on Insurance.

(*b*) The contract must be made with the claimant or some person through whom he derives title, see *Empress Engineering Co.*, 16 Ch. D. 125; *Ex p. Pearce, Rotherham Alum Co.*, 25 Ch. D. 103. See also *British Waggon Co. v. Lea*, 5 Q. B. D. 149, where there was a supervision order.

(*c*) *Ebbw Vale Co.'s Claim*, 8 Eq. 14 (sanction refused to liquidator to sign acceptances for the goods). *Lafitte & Co. v. Lafitte*, 42 L. J. Ch. 716. See *Trent and Humber Co.*, 4 Ch. 112. As to a building agreement and a condition precedent, see *Northumberland Avenue Hotel Co.*,

Fox and Braithwaite's Claim, 56 L. T. 833. As to a claim by a railway contractor for the contract money in priority, see *South Eastern of Portugal Ry. Co.*, 17 W. R. 982. *Quære* what are the rights of a claimant for unliquidated damages not arising out of a contract or promise, if any.

(*d*) *Ex p. Tondeur*, 5 Eq. 160, a case of a bill of exchange; *Re Barber & Co.*, 9 Eq. 725.

(*e*) *Inchbald v. Western Neilgherry Coffee Co.*, 17 C. B. N. S. 733.

(*f*) *Asphaltic Wood Pavement Co., Lee and Chapman's Case*, 30 Ch. D. 216.

company, judgment for the plaintiffs, whether by consent or after hearing, precludes the liquidator from denying the existence of the agreement on a proof being sent in for the total amount due under the agreement (a).

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Amalgamated companies.—When the business of one company has been made over to another, it becomes important in a winding-up of either of such companies to inquire whether a creditor has accepted the new company as his debtors in substitution for the liability of his old company. Such questions have usually arisen in the case of insurance companies before the Life Assurance Companies Act, 1872. **Novation**, as it is termed in Civil Law (b), has been considered by the Court of Chancery, as well as by Lord Cairns and Lord Westbury in the *Albert and European Arbitrations*, to be a question of intention; the intention being a question of fact; but great difference of opinion has existed as to the evidence of the fact (c). Far more cogent and precise proof of an acceptance by a creditor of the liability of a new company, in the case of the union of two companies, has been required, than of an acceptance of a new firm as his debtors where other partners have entered into an existing firm (d). “In order to constitute a novation it must be tripartite—the creditor, the original debtor, and the new debtor must all be parties to it” (e). It may be stated as a general result of the cases in Chancery that if a creditor, where there has been an amalgamation, receives in substance notice that he has his election whether he will take the liability of the new

(a) *Re South American and Mexican* [1895], 1 Ch. 37.

(b) Just. Inst. III. tit. 29 (30).

(c) See *Family Endowment Soc.*, 5 Ch. 118, 137, per Giffard, L.J. Cf. the earlier case of *British Provident Ass. Soc.*, 10 L. T. 326. See the numerous cases in the *Albert and European Arbitration*, Reil. 5, 46, 84. The following is a collection of the principal cases:—*Times Life Assce. Co.*, 5 Ch. 381; *Anchor Assce. Co.*, ib. 632; *Manchester and London Assce.*, ib. 640; *National Provincial Life Assce. Soc.*, 9 Eq. 306; *Ex p. Blood*, ib. 316; *Merchants' Assce. Soc.*, ib. 694; *Fleming's Case*, 6 Ch. 393; *Griffith's Case*, ib. 374; *Even's Claim*, 16 Eq. 354; *Hort's Case*, 1 Ch. D. 307; *Harman's Case*, ib. 326;

Conquest's Case, ib. 334; *Cocker's Case*, 3 Ch. D. 1; *Dowse's Case*, ib. 384; *Miller's Case*, ib. 391. But as to annuitants, see *Family Endowment Soc.*, 5 Ch. 118; *India and London Life Assce. Co.*, 7 Ch. 651; *National Provincial Life Ass. Soc.*, 9 Eq. 306. As to novation in cases other than insurance companies, see *Commercial Bank of India and the East*, 18 L. T. 668; *Smith, Knight, & Co.*, 4 Ch. 662; *Saxon Life Assce. Soc.*, 2 J. & H. 408; *Taurine Co.*, 38 L. T. 53.

(d) *Family Endowment Soc.*, *supra*.

(e) *Manchester and London Life Assce.*, 9 Eq. 643, 649, per James, V.C.

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company in lieu of that of the old company or not, and then, even without any express contract, he acts upon it and takes benefits from the new company which he could only obtain if he had assented to the substitution, the Court will, unless there is proof to the contrary, find that he has so agreed to accept the liability of the new company (a).

Where the amalgamation is *ultra vires*, the company is not entitled to be dissolved, and may be resuscitated for purposes of winding-up when its contract debts fall due, unless it can be proved that the contract-holders had full knowledge or sufficient notice, and assented in such a manner as to agree to look to the transferee company only for satisfaction (b).

Before the Life Assurance Companies Act, 1872, there was a difference of opinion between Lord Cairns and Lord Westbury as to how far, and under what circumstances, a novation was constituted by a policy-holder merely standing by and paying premiums to a new company after notice of an amalgamation; and this point had not been settled by any decisions. That Act now provides that where a company transfers its business to or becomes amalgamated with another company, no policy-holder shall by reason of any payment of premiums to the other company, or any other act, be deemed to have accepted in lieu of the first-mentioned company the liability of the other company, unless he expressly abandons his claim by a written agreement to that effect (c).

Rent, rates, taxes, &c.—As to proof for rent, rates, taxes, &c., see Chapter V., *ante*, pp. 67, 71.

Costs.—As to costs, see Chapter XIV.

Crown.—As to the right of the Crown, see Chapter V., *ante*, p. 73.

Promoters.—If a promoter (d) procures a company to

(a) *Spencer's Case*, 6 Ch. 362, 370, a case of a policy-holder.

(b) *Conquest's Case*, 1 Ch. D. 334; *Smith, Knight, & Co.*, 4 Ch. 662.

(c) 35 & 36 Vict. c. 41. s. 7. But cf. such cases as *Holt's Case*, *supra*.

(d) For the definition of promoters, see *Twyeross v. Grant*, 2 C. P. D. 469; 541, *per* Cockburn,

C.J.; *Emma Mining Co. v. Lewis*, 4 C. P. D. 396; *per* Lindley, J.; *Whaley Bridge Printing Co. v. Green*, 5 Q. B. D. 109; *Erlanger v. New Sombrero Co.*, 3 App. Cas. 1218; *Emmet Mining Co. v. Grant*, 11 Ch. D. 918; *New Sombrero Co. v. Erlanger*, 5 Ch. D. 73; *Bagnall v. Carlton*, 6 Ch. D. 371; *Great Wheel Polygoth*, 53 L. J. Ch. 42; *Lydney and Wiggpool Iron Co. v.*

be formed by improper and fraudulent means, and for the purpose of securing a profit to himself, which if the company was successful it would be unjust and inequitable to allow him to retain, and the company proves abortive, and is ordered to be wound up without doing any business, the promoter will not be allowed to prove, either in respect of his services in forming the company, or as an officer of it after the company was registered (*a*). Nor can the promoter's solicitor prove for items incurred before the formation of the company (*b*). But the company may not be able to avoid liability if it has done business and has taken the benefit of the services (*c*).

A claim for damages for breach of an agreement entered into before the company was in existence, which is incapable of confirmation, will not be allowed; and the company will not be bound by acts which have evidently been done under an erroneous belief that the agreement was binding, if such acts do not amount to evidence of a fresh agreement (*d*).

Other examples.—The following are further examples of claims which may be allowed, and of persons who can prove:—

An assignee, either equitable (*e*) or by virtue of s. 25, sub-s. 6, of the Judicature Act, 1873 (*f*). The right to prove is not affected by the fact that the holders of negotiable instruments purchased after the passing of resolutions to wind up, but without notice of their having been passed (*f*). A contributory who has bought up a debt for a less sum than is actually due thereon, may prove for the full amount of the debt and not merely for what he has paid (*g*). But when the assignor is a shareholder,

Bird, 33 Ch. D. 85; *Ladywell Mining Co. v. Brookes*, *Ib. v. Hugons*, 35 Ch. D. 400. And see now 53 & 54 Vict. c. 64, s. 3.

(*a*) *Hereford Waggon and Engineering Co.*, 2 Ch. D. 621, *per* Mellish, L.J.; *Rotherham Alum and Chemical Co.*, 25 Ch. D. 103; 53 L. J. Ch. 290. See *Madrid Bank, Ex p. Williams*, 2 Eq. 216, as to promotion money.

(*b*) *Rotherham Alum and Chemical Co.*, *supra*.

(*c*) *Empress Engineering Co.*, 16 Ch. D. 125. *Cf. Rotherham Alum and Chemical Co.*, *supra*. See *Emma Silver Mining Co. v. Grant*,

11 Ch. D. 918.

(*d*) *Northumberland Avenue Hotel Co.*, 33 Ch. D. 16. See *In re Patent Ivory Manufacturing Co.*, 38 Ch. D. 156.

(*e*) *Ex p. Colborne and Strawbridge*, 11 Eq. 478; *Gorringe v. Irwell India Rubber, &c., Works*, 34 Ch. D. 128, cited, *ante*, p. 81.

(*f*) *Milan Tramways Co., Ex p. Theys*, 25 Ch. D. 587.

(*g*) *Humber Ironworks Co.*, 8 Eq. 122. But not a person in the position of a trustee, *Ex p. Larking*, 4 Ch. D. 566; and, it appears, not a director, *Milan Tramways Co., Ex p. Theys*, *supra*.

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the assignee can only purchase the debt subject to a right of set-off by the company of all calls which may be made subsequently to the assignment, and previously to payment (*a*).

Damages for calls where a contract for shares has not been registered under s. 25 of the Act, 1867 (*b*), have been allowed; but a similar claim by preference shareholders has been dismissed, and the above cases are virtually overruled. The shareholders might, on finding out that the shares were not in point of law fully paid up, rescind the contract to take them, but as after an order to wind up there could be no rescission, they have no remedy (*c*).

A person who has been held not to be a shareholder, or has properly **repudiated shares** before the winding-up, for amounts paid thereon (*d*).

A claim for **damages for wrongful forfeiture** of shares (*e*).

Where an action has been commenced against a company and continued by leave after a winding-up order, and before trial an order has been obtained to dismiss the action for want of prosecution, the plaintiff in the action is not debarred from bringing forward a claim in the same matter in the winding-up (*f*).

A **trustee for a company**, to indemnify himself for liabilities incurred by him as such trustee (*g*).

Directors for liabilities incurred by them as agents of the company (*h*).

Holders of bills, as for money advanced, where the acceptance was invalid as against the company (*i*).

Holders of bills of exchange with foreign indorsement (*k*).

(*a*) *China Steamship Co., Ex p. Mackenzie*, 7 Eq. 240; *Ex p. James*, 8 Eq. 225, and see Chap. VIII., "Contributories," and as to set-off, *infra*, p. 120.

(*b*) *Mudford's Claim*, 14 Ch. D. 634; *Ex p. Appleyard*, 18 Ch. D. 587. But *qu.*, and see *Houldsworth v. City of Glasgow Bank, infra*, p. 116, and *Addlestone Linoleum Co., infra*. See *Government Security Co. v. Dempsey*, 50 L. J. Q. B. 199.

(*c*) *Addlestone Linoleum Co.*, 37 Ch. D. 191; *Houldsworth v. City of Glasgow Bank, supra*.

(*d*) *Alison's Case*, 9 Ch. 1.

(*e*) *New Chile Gold Mining Co.*, 45 Ch. D. 598.

(*f*) *Orrell Colliery Co.*, 12 Ch.

D. 681.

(*g*) *Ex p. Oriental Commercial Bank*, 3 Ch. 791; *Hart's Claim*, 20 W. R. 435; *Hughes' Claim*, 13 Eq. 623.

(*h*) *Re Irish Exhibition in London, Ltd.*, 10 T. L. R. 215.

(*i*) *London and Mediterranean Bank, Ex p. Birmingham Banking Co.*, 3 Ch. 651. As to proof on bills, see *Adansonie Fibre Co., Miles's Claim*, 43 L. J. Ch. 732; *Ex p. Overend, Gurney, & Co., Land Credit Co. of Ireland*, 4 Ch. 460; *Ex p. Bank of London, Re Barnard's Banking Co.*, 17 W. R. 634; *Ex p. Loder*, 37 L. J. Ch. 846.

(*k*) *Marseilles Extension, &c., Ry. Co.*, 30 Ch. D. 598. As to the

Holders of bills accepted under a conditional authority from the directors (*a*).

Where drafts on the head office of a banking company were given at a distant foreign branch in consideration of moneys paid in at that branch, after presentation of a petition and appointment of a provisional liquidator in England, but before any notice of the stoppage of the bank in London had been received at the foreign branch, and before the date of the winding-up order, it was held that, in cases of mutual credits arising between the bank and the holders for value of the drafts, and the persons by whom the consideration was paid, the holders were entitled to prove (*b*).

Expenses of protest for non-payment of a bill, but not of expenses of protest for better security, nor for commission charged by bankers for accepting the bill (*c*).

A claim in full by a person who had entrusted bills to a bank for collection (*d*).

An **adventurer in a cost-book company** for share of stock and plant (*e*).

A **solicitor's bill**, as a debt subject to taxation (*f*).

Claims for **indemnity** against the company (*g*); but the same debt cannot be proved twice over.

A claim against a company although some of the members may be entitled to indemnity from others (*h*).

Scrip entitling the bearer to a bond for the amount with interest (*i*).

A debt arising from instruments upon which **money was borrowed ultra vires**, so far as the company had the benefit of the sums of money for legitimate purposes (*k*).

damages recoverable when a bill of exchange is dishonoured abroad, see *Commercial Bank of South Australia*, 36 Ch. D. 522.

(*a*) *Land Credit Co. of Ireland*, 4 Ch. 460.

(*b*) *Oriental Bank Corp., Ex p. Guillemin*, 28 Ch. D. 634; see this case, *ante*, p. 80.

(*c*) *English Bank of River Plate, Ex p. Bank of Brazil* [1893], 2 Ch. 438.

(*d*) *Commercial Bank of South Australia*, W. N. 1887, p. 44.

(*e*) *Prosper United Mining Co.*, 7 Ch. 286. See *Frank Mills Mining Co.*, 23 Ch. D. 52, as to a retiring shareholder in Cost-Book Company.

(*f*) *Terrell v. Hutton*, 4 H. L. C.

1091; *Ex p. Quilter*, 4 De G. & S. 183. And see as to taxation, *post*, p 259. *Ex p. Evans*, 11 Eq. 151; *Ex p. Ditton*, 13 Ch. D. 318; *Re Brabant*, Sol. J. 1879, p. 779. And see where proceedings were *ultra vires*, *Ex p. Howard and Dollman*, 1 H. & M. 433.

(*g*) *Ex p. European Bank*, 7 Ch. 99; *Hughes' Claim*, 13 Eq. 623; *Anglo-Australian Co.'s Case*, 4 N. R. 48.

(*h*) *Brampton, &c., Ry. Co.*, 10 Ch. 177.

(*i*) *Goodwin v. Roberts*, 1 App. Cas. 476.

(*k*) *Cork and Youghal Ry. Co.*, 4 Ch. 748.

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Moneys borrowed by fraud of agent and *bonâ fide* applied directly or indirectly for the benefit of the company (a).

But in the following instances claims will not be allowed :—

Damages in the winding-up where a shareholder has been induced to take shares by fraud (b).

Claims for goods sold, or services, to an **unincorporated association**; in such cases, the persons individually who ordered the particular goods or services are liable (c).

A claim on **policies** which are void for non-compliance with 30 Vict. c. 23, s. 7 (d); but a claim will be allowed if there is sufficient admission of liability in the books of the company (e).

A claim for **arrears of rent-charge** which had accrued since the liquidators had repudiated the land (f).

Remuneration by directors, if the articles do not provide for it (g).

A claim on a **bill of exchange** accepted only by one of several liquidators without proper authority (h).

Claims against promoters, directors, or other persons, but not against the company itself (i).

Claim by **solicitor of promoter** for items incurred before the formation of the company (k).

Claims upon **contracts which are ultra vires** (l); or costs incurred by a solicitor in matters he knew to be *ultra vires* (m); or a claim on a promissory note not signed by authorized agent, or not given in the ordinary course of business, or necessary for carrying it on (n).

(a) *Ib.* See *Ex p. Shoolbred, Re Japanese Curtains, &c., Co.*, 28 W. R. 339. As to where there were no borrowing powers, see *Troup's Case, Re Electric Telegraph Co. of Ireland*, 22 Beav. 471.

(b) *Houldsworth v. City of Glasgow Bank*, 5 App. Cas. 317. See *post*, p. 174, as to rescinding contracts for shares, and *cf. Mudford's Claim*, and *Ex p. Appleyard, supra*, p. 114.

(c) *London Marine Ins. Ass.*, and cases, *infra*. See *Arthur Average Ass.*, 3 Ch. D. 522.

(d) *Arthur Average Ass., Ex p. Hargrove & Co.*, 10 Ch. 542.

(e) *Teignmouth and General Mutual Shipping Ass.*, 14 Eq. 148.

(f) *Blackburn Building Soc.*, 42 Ch. D. 343.

(g) See *Dunston v. Imperial Gas Co.*, 3 B. & Ald. 125; *Hutton v. West Cork Ry. Co.*, 23 Ch. D.

654. But see *Leicester Club and Racecourse Co., Ex p. Cannon*, 30 Ch. D. 629, and *Dale and Plant, Ltd., ante*, p. 93, under "Directors, Officers, and Servants."

(h) *London and Mediterranean Bank, Bolognesi's Case*, 5 Ch. 567.

(i) *London Marine Ins. Ass.*, 8 Eq. 176; *Wryghte's Case*, 2 De G. M. & G. 636, 640, and see 5 De G. & S. 244; *Pritchard's Case*, 4 De G. & S. 323; 5 De G. M. & G. 484; *Pickering's Claim, infra*.

(k) *Rotherham Alum Co.*, 25 Ch. D. 103.

(l) See *Zulueta's Claim*, L. R. 5 Ch. 444 (as to purchasing its own shares); *East of England Banking Co.*, 4 Ch. 14. But see *Cork and Youghal Ry. Co., supra*.

(m) *Phoenix Life Ass. Co.*, 8 L. T. 728.

(n) *Cunningham & Co., Simpson's Claim*, 36 Ch. D. 532.

A claim against a company under a contract by deed entered into by a director having power to make contracts, but in which no mention was made of the company (*a*).

A claim upon which former costs have not been paid (*b*).

A claim under a fraudulent agreement, or under a fraudulent trust (*c*).

The fact that the debt sought to be proved is a judgment debt is not conclusive, the Court may, in some cases, inquire into the consideration (*d*).

The rule in bankruptcy that there cannot be a double proof against the same estate in respect of the same debt, applies in cases of winding-up (*e*).

What property is divisible, and priority.—Subject to the rights of particular creditors, and to the exceptions referred to below, the assets, after payment of the costs of winding-up, as mentioned in Chapter XIV., are divisible *pari passu* amongst the general creditors of the company.

Power is given to the liquidators by s. 159 of the Act of 1862 and s. 12 of the Act of 1890, with the sanction either of the Court or of the committee of inspection in a winding-up by the Court, or of the Court when subject to supervision, and with the sanction of an extraordinary resolution in a voluntary winding-up, to pay any claims of creditors in full (*f*). But there are no provisions as to any class of creditors. The Court also may, if the assets are insufficient to satisfy the liabilities, make an order as to the payment of costs incurred in winding-up in such order of priority as the Court thinks just (*g*).

One man companies.—As to the liability of a trader who fraudulently carries on business in the name of a company fraudulently formed to enable him to defeat his creditors, see *post*, Chapter XII., p. 225.

Parliamentary deposit.—Under s. 1 of the Parliamentary Deposits and Bonds Act, 1892 (*h*), where, in pursuance of

(*a*) *Pickering's Claim*, 6 Ch. 525.

(*b*) *United Kingdom Electric, &c., Co.*, 34 L.T. 238. See *Allen's Executors' Claim*, 45 L.J. Ch. 366.

(*c*) *Great Berlin Steamboat Co.*, 26 Ch.D. 616. See *Madrid Bank, Ex p. Williams*, 2 Eq. 216.

(*d*) *Ex p. Banner*, 17 Ch. D. 480; *Bowes v. Hope Life Insce. Co.*, 18 H. L. C. 389; *United Stock Exchange Co.*, W. N. 1884, p. 251. See *Ex p. Kibble*, 10 Ch. 373; *Ex*

p. Ritso, 22 Ch. D. 529. See *Ex p. Saville*, W. N. 1887, p. 154.

(*e*) *Re Oriental Commercial Bank, Ex p. European Bank*, 12 Eq. 501; *ib.*, 7 Ch. 99. See *supra*.

(*f*) See p. 192, as to compromises with creditors.

(*g*) S. 110. And see as to priority in payment of costs, Chap. XIV., *post*, p. 248.

(*h*) 55 & 56 Vict. c. 27.

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Act of Parliament or rules thereunder, moneys or securities have been deposited with the Paymaster-General to secure completion by a company of any undertaking, and the undertaking has not been completed within the time limited (a); the High Court may order the deposit to be applied in compensating landowners, and other persons whose property has been interfered with, or rendered less valuable by the commencement, construction, or abandonment of the undertaking; or who have been subjected to injury or loss in consequence of any compulsory powers of taking property.

Subject to payment of such compensation the High Court may,

(1.) If a receiver has been appointed;

(2.) Or, if the company is insolvent and has been ordered to be wound up;

(3.) Or, if the undertaking has been abandoned; order the deposit fund to be paid to the receiver or liquidator, or be applied as part of the assets of the company for the benefit of the creditors (b).

Subject to such application the High Court may, after such public notice as the Court shall direct (c), order the deposit fund to be paid to the depositors or persons claiming through them.

Holders of policies actually payable are in the same position as regards priority as other creditors. And where the policies of a life assurance company provided that the funds and property of the company "after satisfying all assurances granted by the society previously payable, and all other prior charges on such funds and property," should alone be liable for payment of the sum assured, and that no member of the company should be liable for it beyond the amount unpaid on his shares, an order having been made for winding-up; it was held that a

(a) No order can be made before the time limited for completion has expired, *Ex p. Chambers* [1893], 1 Ch. 47.

(b) There is no longer any distinction between "meritorious" and "non-meritorious" creditors, *Ex p. Bradford Tramways Co.* [1893], 3 Ch. 463; *Hull, &c., Railway Co., W.N.* (1893), p. 83; *Re Manchester, &c., Tramways Co.* [1893], 2 Ch. 638. As to solicitors and parliamentary agents, see *Manchester, &c., Tramways Co., supra*, where

claim disallowed; *Bradford Tramways Co., supra*, claim allowed. As to liquidator, see *Re Colchester Tramways Co.* [1893], 1 Ch. 309. The word "creditors" is not limited to the creditors of the particular undertaking which has been abandoned, but includes the general creditors of the company, *Ex p. Bradford Tramways, supra*.

(c) See *Hull, &c., Railway Co., supra*, where notice to landowners only directed.

sum which had become payable on a policy before the commencement of the winding-up, but had not been paid, had no priority over the claims of policy-holders, the moneys assured by whose policies had not become payable (a).

The registration of any company, in pursuance of **Part VII. of the Act**, does not affect or prejudice the liability of such company to have enforced against it, or its right to enforce, any debt or obligation incurred, or any contract entered into by, to, with, or on behalf of such company previously to such registration (b). If an unlimited company is registered with limited liability, and is then wound up, there is no provision in the Act of 1862, similar to that in the old Act of 1856, saving the rights of creditors as against the company and the members of the company after registration. But the provisions of s. 196 (5) seem to secure this result and create unlimited liability for debts incurred previous to registration. It has, however, been held where an industrial and provident society originally formed and registered with unlimited liability was re-registered with limited liability, and ordered to be wound up, that past members who had held fully paid-up shares in the society were not liable to be put on the list of contributories (c).

Where an unregistered assurance society issued policies under which the assets of the company alone were liable, and the company being insolvent, was registered as an unlimited company under the Act of 1862, and immediately afterwards ordered to be wound up, it was held that the shareholders were liable beyond the amount of their shares for the expenses of the winding-up; but that there was no liability beyond the amount of the shares for any breach of contract involved in ceasing to carry on business (d).

Statutes of Limitation.—The assets are to be applied in satisfaction of all the liabilities which exist at the time when the winding-up order is made, and therefore all debts which are not then barred are provable, for the statute does not run against a creditor from that time (e). It follows from the above remarks that any debt which is

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(a) *International Life Ass. Soc., McIver's Claim*, 5 Ch. 424.

(b) S. 194.

(c) *Sheffield and Fallamshire, &c., Co-operative Soc., Fountain's Case, Swift's Case*, 4 De G. J. & S. 699.

(d) *Lethbridge v. Adams*, 13 Eq. 547.

(e) S. 98. *General Rolling Stock Co.*, 7 Ch. 646. See also *Warwick and Worcester Ry. Co.*, 27 L. J. Ch. 735; *Gloucester, &c., Ry. Co.*, 2 Giff. 47.

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barred at the date of the winding-up order cannot be admitted to proof (a).

But there is power to exclude creditors not proving within a certain time (b). And if a creditor neglects to carry in his claim, and a proof would be unjust to others who have altered their position, he will not be allowed to disturb dividends already paid, and may lose his right to prove altogether (c). — *Gloucester & R. Co. Ltd.* (1884) 1021

Set-off.—The subject of set-off as between a company in course of being wound up and its members will be dealt with in its proper place (d).

As between persons who are not members and a solvent company, the right of set-off is not interfered with by the winding-up order (e).

S. 10 of the Judicature Act, 1875 (f), imports into the winding-up of insolvent companies the rules as to set-off in bankruptcy (g). The winding-up must have commenced since 1st November, 1875 (h); and there must be sufficient reason to believe that the company will turn out insolvent (i). But the Earl of Selborne, L.C., has said that any company in liquidation will be deemed to be insolvent until it is shown that the assets are sufficient for payment of the debts in full (k).

Where, therefore, there is a debtor and creditor account between the company and any person proving or claiming to prove a debt, it is, of course, necessary to adjust the account and strike a balance between them. For this purpose, s. 38 of the Bankruptcy Act, 1883 (l), enacts that, "Where there have been mutual credits (m), mutual

(a) *Mitchell's Claim*, 6 Ch. 822.

(b) S. 107, and 53 & 54 Vict.

c. 63, s. 13.

(c) *Joint Stock Discount Co.'s Claim*, 7 Ch. 646; *Ex p. A'Beckett*, 2 Jur. N. S. 684; *Ex p. Forest*, 2 Giff. 42. See *Kit Hill Tunnel*, 16 Ch. D. 590.

(d) *Post*, p. 187.

(e) *Anderson's Case*, 3 Eq. 337. See *Ex p. Bates*, 22 L. T. 430; *Ex p. James*, 8 Eq. 225; *Ex p. Searight*, W. N. 1870, p. 114, before the Jud. Act.

(f) 38 & 39 Vict. c. 77.

(g) *Mersey Steel Co. v. Naylor & Co.*, 9 App. Cas. 434.

(h) *Schie & Co.*, 1 Ch. D. 48; *Phoenix Bessemer Steel Co.*, 24

W. R. 19; *Sherwin v. Selkirk*, 12 Ch. D. 68.

(i) *Re Hopkins*, 18 Ch. D. at p. 377.

(k) *Milan Tramways Co.*, 25 Ch. D. 587, 591.

(l) 46 & 47 Vict. c. 52.

(m) As to mutual credit, *Rose v. Hart*, 8 Taunt. 499; *Elliott v. Turquand*, 7 App. Cas. 79; *Collins v. Jones*, 10 B. & C. 777; *Russell v. Bell*, 8 M. & W. 277; *Alsayer v. Currie*, 12 M. & W. 751; *Peat v. Jones*, 8 Q. B. D. 147; *Jack v. Kipping*, 9 Q. B. D. 113; *Re Winter*, *Ex p. Bolland*, 8 Ch. D. 225; *Ex p. Price*, 10 Ch. D. 648; *Ex p. Griffin*, 14 Ch. D. 37; *Allaway v. Steere*, 10 Q. B. D. 22; *Ex p.*

debts, or other mutual dealings between a debtor against whom a receiving order shall be made under this Act, and any other person proving or claiming to prove a debt under such receiving order, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set off against any sum due from the other party, and the balance of the account, and no more, shall be claimed or paid on either side respectively; but a person shall not be entitled under this section to claim the benefit of any set-off against the property of a debtor in any case where he had at the time of giving credit to the debtor, notice of an act of bankruptcy committed by the debtor, and available against him."

But this section does not apply where the right is merely to a return of goods, and the claim does not result in pecuniary liability (*a*).

The line as to set-off must, as a general rule, and in the absence of special circumstances, be drawn at the date of the commencement of the winding-up (*b*), and when examining a proof of debt the liquidator is at liberty to examine a set-off in order to ascertain at what figure the proof should be allowed (*c*).

The right may exist independently of any intention of the parties to create such a claim (*d*).

The right of an assignee to prove in respect of a debt assigned by a shareholder after a company has commenced to be wound up is subject to set-off by the company of all calls which may be made subsequently to the assignment, and previously to the payment of the debt (*e*).

No right, under the "mutual credit" section, arises except as between the creditor and the company (*f*).

Questions of this kind must be considered in the same

Morier, 12 Ch. D. 491; *Re Hodgson*, 9 Ch. D. 673; *Re Orpen*, 16 Ch. D. 202; *Green v. Smith*, 22 Ch. D. 586; *Ex p. Caldicott*, 25 Ch. D. 716. As to bill accepted and paid after commencement of bankruptcy, *Ex p. Reid*, 14 Q. B. D. 963. As to joint debts, *Tyso v. Pettit*, 40 L. T. 132.

(*a*) *Eberles Hotel Co. v. Jonas*, 18 Q. B. D. 459.

(*b*) *Milan Tramways Co.*, *supra*; *Ex p. Reid*, 14 Q. B. D. 963, distinguishing *Elliot v. Turquand*, 7 App. Cas. 79. As to a payment void under s. 153, see *United Port*

Ins. Co., *Ex p. Etna Insurance Co.*, 46 L. J. Ch. 403.

(*c*) *National Wholemeal Bread Co.* [1892], 2 Ch. 151.

(*d*) *Collins v. Jones*, 10 B. & C. 777; *Alsager v. Currie*, 12 M. & W. 751.

(*e*) *China Steamship Co.*, *Ex p. Mackenzie*, 7 Eq. 240; *Ex p. Strang*, 5 Ch. 492.

(*f*) *Turner v. Thomas*, L. R. 6 C. P. 610. As to right of surety paying off debt after winding-up, see *Barrett's Case*, 4 De G. J. & S. 756.

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manner as if they had arisen at the time of the winding-up, and cannot be varied by any change of situation of one of the parties (*a*). A person who at the time of the winding-up owes a debt to the company, and has no right of set-off, cannot acquire such a right by taking an assignment of another debt due to another creditor of the company (*b*).

Subject, therefore, to the general rule that the state of accounts is to be judged of at the date of the commencement of the winding-up (*c*), there is no right of set-off where the creditor has only become a debtor to the company since the winding-up (*d*). Nor when a debtor to the company has only become a creditor since the same period (*e*). Where A. proved a debt against a company, and, after his proof had been admitted, he transferred the benefit of it *bond fide* for value to B., and B. subsequently made a *bond fide* transfer for value to C., and B. was a debtor to the company, but the debt due from him (a claim for misfeasance) was not established till after the transfer to C., the liquidator was not permitted to set-off against C. the debt due from B. to the company (*f*).

A misfeasant cannot set off any money due from the company against the damages due under s. 10 of the Act of 1890 (*g*).

A creditor cannot set off a debt incurred prior to the winding-up against the price of goods supplied to him by the company after, but in pursuance of a contract made before, the commencement of the winding-up (*h*).

The cross claims need not be of exactly the same nature. For instance, unliquidated damages for breach of contract may be set off against a claim for a liquidated sum under the contract (*i*). If a liquidator, therefore, brings an action

(*a*) *Dickson v. Evans*, 6 T. R. 57, 59; *Milan Tramways Co.*, *supra*; *Asphaltic Wood Pavement Co.*, 30 Ch. D. 216.

(*b*) *Milan Tramways Co.*, *supra*.

(*c*) *Supra*.

(*d*) *Ex p. Rhodes*, 15 Ves. 539; *Ex p. Young*, 41 L. T. 40. Cf. *Booth v. Hutchinson*, 15 Eq. 30.

(*e*) *Dickson v. Evans*, 6 T. R. 47; *Marsh v. Chambers*, Strange, 1234.

(*f*) *Milan Tramways Co.*, *supra*. See also *Asphaltic Wood Pavement Co.*, *supra*. *Gort. of Newfoundland*

and v. Newfoundland Ry. Co., 13 App. Cas. 199.

(*g*) Formerly s. 165, now repealed by the above Act. *Exchange Banking Co.*, 21 Ch. D. 519; *Anglo-French Co-operative Soc.*, 21 Ch. D. 492; *Milan Tramways Co.*, *supra*.

(*h*) *Ince Hall Mills Co. v. Douglas Co.*, 8 Q. B. D. 179. See *Mersey Steel Co. v. Naylor & Co.*, 9 Q. B. D. 648, at p. 669, *per* Lindley, L.J., and *infra*.

(*i*) *Booth v. Hutchinson*, *supra*; *Peat v. Jones*, *supra*; *Mersey Steel*

to recover the price of goods delivered under a contract by the company, the defendant may set off a claim for unliquidated damages (*a*). And unliquidated damages for a fraudulent misrepresentation on a sale may be set off against the price (*b*). But when it is attempted to set off unliquidated damages, it seems that the cross claims must have reference to the same contract (*c*).

A secured debt can be set off against one that is not secured (*d*), and a debt on bond against a debt on simple contract (*e*). So, also, a cash balance on one side against outstanding acceptances on the other (*f*). A secured creditor may also set off profits realized from the security since the winding-up against interest accrued during the same period (*g*).

It seems to be impossible, even by express agreement, to exclude altogether the operation of what is an especial statutory law; that is to say, the law of mutual credit (*h*). But by express or implied agreement between the parties, debts not due in the same right may be set off against each other (*i*).

A debt cannot be set off against a future liability; and there is no present right, on the part of a person who has accepted bills in favour of a company being wound up, to set off against his future liability upon such bills the present liability of the company to him upon their dishonoured acceptances (*k*). Nor is he entitled to insist upon his acceptances being retained and held by the liquidator until they shall become due, in order that the right of set-off, which would then arise, may be made available to him (*l*).

It is not yet decided to what extent the buying up of bills, &c., in order to set them off against any sums due to the company by persons so purchasing is legal.

Co. v. Naylor & Co., 9 Q. B. D. 648; affirmed by H. L., 9 App. Cas., 434. See *Asphaltic Wood Pavement Co.*, *supra*.

(*a*) *Mersey Steel Co. v. Naylor & Co.*, *supra*.

(*b*) *Jack v. Kipping*, *supra*.

(*c*) *Asphaltic Wood Pavement Co.*, *supra*; *Milan Tramways Co.*, *supra*; *Government of Newfoundland v. Newfoundland Ry. Co.*, 13 App. Cas. 199.

(*d*) *Ex p. Barnett*, 9 Ch. 293.

(*e*) *Ex p. Law*, De Gex. 378.

(*f*) *Ex p. Macredie*, 8 Ch. 535.

(*g*) *Re London, &c., Hotels Co.*,

Quartermaine's Case [1892], 1 Ch. 639.

(*h*) *Ex p. Fletcher*, 6 Ch. D. 350; *Ex p. Barnett*, *supra*. See also *Young v. Bank of Bengal*, 1 Dea. p. 653; *Clarke v. Fell*, 4 B. & Ad. 404.

(*i*) *Vulliamy v. Noble*, 3 Mer. p. 618; *Tyso v. Pettit*, 40 L. T. 132; *Kinnerley v. Hossack*, 2 Taunt. 170.

(*k*) *Smith, Fleming, & Co.'s Case*, 1 Ch. 538. As to the practice of buying up debts in order to set them off, see Lindley (5th ed.).

(*l*) *Ib.*

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In the winding-up of life assurance companies, a **current policy-holder** cannot set off the sum at which such policy is estimated against a debt due from him to the company (*a*). But in a case where policies matured in the lifetime of the policy-holder, and were unpaid at the date of the winding-up, the holder was allowed to set off the unpaid amount against a claim made by the company in respect of loans issued on the security of the policies (*b*).

(*a*) *Ex p. Price*, 10 Ch. 618;
Parlby's Case, 19 W. R. 382.

(*b*) *Sovereign Life Assce. Co. v. Doid* [1892], 2 Q. B. 573.

CHAPTER VIII.

CONTRIBUTORIES.

Meaning of contributory.	Infants.
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Fully paid-up shares.	Adjustment amongst themselves.
General liability, and how avoided.	Companies registered but not formed under Acts.
Validity of forfeitures and surrender of shares.	Unregistered companies.
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Meaning of contributory.—In the case of a company formed and registered under the Joint Stock Companies Acts, or the Act of 1862, a contributory is a person liable to contribute to the assets for the payment of the debts and liabilities, and the costs, charges, and expenses, in the event of the company being wound up (*a*). Preference shareholders are not mere creditors, but are as much shareholders in a company as the ordinary shareholders (*b*).

As regards companies registered under the Act of 1862, or under the Acts 1856–7, but not formed under such Acts, see s. 196, sub-s. 5, as to what persons are to be deemed contributories.

A company may be so constituted that there are several classes of members, and the liability as to contributions may not be restricted merely to the shareholders holding the capital of the company, as for instance shareholders, and assurance members not holding shares, with a liability as

(*a*) S. 74, and s. 38, ss. 76–78, *water Navigation Co.*; *Birch v. Cropper*, 14 App. Cas. 525.

(*b*) *Per* Lord Herschell, *Bridge-*

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between themselves to the payment of the debts of the company depending upon the degree or order prescribed by the terms of its constitution (a).

The creditors of a company which is being wound up have, to some extent, greater rights against the contributories than the company in its corporate capacity itself had (b).

As to a voluntary winding-up being followed by a compulsory winding-up, and as to the effect of a list already settled, see case below (c).

A person cannot be made a contributory of an abortive company which is wound up, unless he has entered into an agreement, or has otherwise made himself liable, for a share of the debts arising out of the attempt to float such a company; and a mere subscriber to an abortive company, or promoter, or member of a provisional committee, is not a contributory (d).

The persons who are liable as contributories may be included in the following four classes.

Present registered members.—Those who are members (e) at the commencement of the winding-up are primarily liable for everything, and must be first individually exhausted before any past member can be called upon (f). They are liable only, in the case of companies limited by shares, to the amount remaining unpaid on their shares (g). This class may repudiate their liability if they can shew that they never agreed to become members, by proving either that no binding agreement was entered into by them, or that they were under some personal incapacity (h).

(a) See *Winstone's Case*, *Re Albion Assce. Soc.*, 12 Ch. D. 239; *South London Fish Market Co.*, 39 Ch. D. 324; *Albion Life Ass. Soc.*, 16 Ch. D. 83; *Great Britain Mutual Life Ass. Soc.*, *ib.* 246; *Bath's Case*, *Re Norwich Provident Insee. Soc.*, 11 Ch. D. 386; *Lion Insee. Assoc. v. Tucker*, 12 Q. B. D. 176.

(b) See *Oakes v. Turquand*, L. R. 2 H. L. 325; *Addlestone Linoleum Co.*, 37 Ch. D. 191; *Houldsworth v. City of Glasgow Bank*, 5 App. Cas. 317; *Tennent v. City of Glasgow Bank*, 4 App. Cas. 615; *Muir v. Same*, 4 App. Cas. 337; *Burgess's Case*, 15 Ch. D. 507; and see *Broderip v. Salomon* [1895],

2 Ch. 323.

(c) *Taurine Co.*, 25 Ch. D. 118.

(d) See *Norris v. Cottle*, 2 H. L. C. 647; *Bright v. Hutton*, 3 H. L. C. 341; *Hutton v. Thompson*, 3 H. L. C. 161.

(e) As to who are members, see s. 23; as to personal representatives, heirs, devisees, s. 76; as to bankruptcy, s. 77; as to married women, s. 78.

(f) S. 38 (3); *Morris's case*, 7 Ch. 200; *Scottish Petroleum Co.*, 23 Ch. D. 413.

(g) S. 38 (4). As to a company limited by guarantee, see s. 38 (5).

(h) As to infants, see p. 154; as to married women, p. 151.

Although a person would have a clear right to be taken off the list of contributories, if, on receiving a notice of allotment, he had forthwith repudiated the shares, yet, when a winding-up order is made before he repudiates, whereby the rights of creditors are made paramount, his application to rectify the register will be refused (*a*).

Where articles provide for the surrender of shares held by its servants on the termination of their service, their names will not be removed from the list of contributories when the company is being wound up, although previously discharged (*b*).

The cases as to whether persons have agreed to take shares cover a wide field of inquiry, and do not come within the limits of this work. Every dispute as to whether there is an agreement to take shares must of course be decided upon the particular circumstances of the case, and the question is whether there is a complete contract, or whether the parties so acted as to convince the Court that they have agreed to become members. In order to affect a person with liability in respect of his having agreed to become a member, it must be shewn (1) that he had entered into a contract to take shares of which the company, or the liquidator, could claim specific performance, or (2) that he is estopped from denying that he agreed to become a member, *e.g.* that his name was entered on the register of shareholders with his assent (*c*). By s. 87 the register is only *primâ facie* evidence of any matters directed or authorized to be inserted therein (*d*).

See the summary of leading cases as to this, *post*, p. 163.

Fully paid-up shares.—As holders of fully paid-up shares in a limited company are not under any circumstances liable to calls, they cannot be placed on the list of contributories, unless they so desire (*e*). A holder of fully paid-up shares, who is indebted to the company, will not be put on the list simply to bring him within the summary jurisdiction of s. 101 (*f*). But such a shareholder is entitled

(*a*) *Land Loan, &c., Co. of South Africa*, 54 L. J. Ch. 550.

(*b*) *Walker and Hacking*, 57 L. T. 763.

(*c*) *Barangah Oil Refining Co.*, 36 Ch. D. 702.

(*d*) See ss. 35, 37, and 98.

(*e*) *Marlborough Club Co.*, 5 Eq. 365; *Leifchild's Case*, 1 Eq.

231; *Hastie's Case*, 7 Eq. 3; *Anglesea Colliery Co.*, 1 Ch. 555; *Baylan Hall Colliery Co.*, 5 Ch. 346; *Hodges' Distillery Co.*, 6 Ch. 51. See *Re Dubois*, 26 Sol. J. 282.

(*f*) *Marlborough Club Co.*, *supra*. But see *Mercantile Trading Co.*, *Schroder's Case*, 11 Eq. 131.

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to be on the list in order to share the surplus assets, if any, but only then by his consent. A call may be made for the purpose of adjusting the rights of contributories (*a*).

As to arrangements between shareholders to make themselves liable for certain debts to a greater amount than their fully paid-up shares, see the cases below (*b*).

With the object of preventing the fraudulent contracts which were entered into by treating shares as paid-up in full when they had only been paid for in land, goods, or services of doubtful value, s. 25 of the Act of 1867 provides that shares, in companies registered under the Act of 1862, are to be taken to be issued and held subject to the payment of the whole amount thereof in cash, unless there is a contract in writing to the contrary filed with the Registrar of Joint Stock Companies at or before the issue of such shares. The simple effect of the section is, that a contract cannot be made that shares issued shall be paid for otherwise than in cash, except by a registered contract. The original contract must be filed before the shares are allotted (*c*). The duty of registering, when it is agreed that fully paid-up shares shall be taken in respect of cash due, is not specially thrown upon the creditor, but falls upon the party seeking to enforce performance of the contract (*d*).

The requirement of the above section, that payment be made in cash, is satisfied, if at the time there was money due by the company to the shareholder which could be satisfied by the calls due on the shares, and if there was an agreement in effect that it should be so satisfied. There must be money due from the one to the other on both sides, and the parties must agree to set one demand of money against the other demand of money (*e*).

In fact, anything which would support a plea of payment at law is a payment in cash within the meaning of the section, and actual money need not be handed backwards and forwards (*f*). Thus, a statement of account

(*a*) *Anglesea Colliery Co.*, *supra*; *Railway Time Tables Co.*, *Ex p. Welton* [1894], 1 Ch. 255.

(*b*) *Maria Anna, &c., Coal Co.*, 6 Ch. D. 447; *Lion Mutual Marine Ins. Ass. v. Tucker*, 12 Q. B. D. 176.

(*c*) *British Farmers Linseed, &c., Co.*, 7 Ch. D. 533. See *Burkinshaw v. Nicolls*, 3 App. Cas., at p. 1005; *A. W. Hall & Co.*, 37 Ch. D. 712; *London Celluloid Co.*, *Bayley and Hanbury's Cases*, 39

Ch. D. 190.

(*d*) *Burangah Oil Refining Co.*, 36 Ch. D. 702.

(*e*) *Government Secy. Insce. Co.*, *White's Case*, 12 Ch. D. 511, at pp. 517, 519; *Land Development Assoc.*, *Kent's Case*, *post*, p. 170; *Regent United Service Stores, Ex p. Bentley*, 12 Ch. D. 850; *Barrow-in-Furness, &c., Co.*, 14 Ch. D. 400; *Johannesburg Hotel Co.* [1891], 1 Ch. 119.

(*f*) *Ib.*, *Fothergill's Case*, 8 Ch. 272; *Spargo's Case*, *ib.* 407; *Coates'*

between the shareholder and the company, with an agreement to set off the cross items against each other, and for payment of the balance, if any, is equivalent to a payment in cash within the above section (a). But the acceptance of goods or services in satisfaction of the debt upon the shares is not sufficient (b); and the insertion in a newspaper of a series of advertisements in consideration of an allotment of fully paid-up shares is not within the principle of the above cases, there being at the time of the allotment no debt payable in cash to the allottee by the company (a).

Each party must have an actual demand on the other for present payment (c). It would seem that where the contract to take shares is a contract to take fully paid shares, there can never be payment by set-off, for a contract to take fully paid-up shares creates no liability to pay money, and no debt under any circumstances, and therefore no cross debts capable of set-off (d).

The following short summary of cases will enable the practitioner to consider whether a good payment within the section has been made or not.

Held good payment :—

- Coates' Case*, 17 Eq. 169.
- Adamson's Case*, 18 Eq. 670.
- Ferrao's Case*, 9 Ch. 355.
- Spargo's Case*, 8 Ch. 407.
- Maynard's Case*, 9 Ch. 60; *Ex p. Bentley*, 12 Ch. D. 850.
- Barrow-in-Furness, &c., Co.*, 14 Ch. D. 400.
- Cf. Schroder's Case*, 11 Eq. 131.
- Barangah Oil Refining Co., Arnot's Case*, 36 Ch. D. 702.
- Jones, Lloyd, & Co.*, 41 Ch. D. 159; and *infra*.

Held no payment :—

- Cleland's Case*, 14 Eq. 387.
- Fothergill's Case*, 8 Ch. 270.
- Fraser's Case*, 42 L. J. Ch. 358.
- Pagin & Gill's Case*, 6 Ch. D. 681.
- Andress' Case*, 8 Ch. D. 126.

Held no payment—continued.

- White's Case*, 12 Ch. D. 511.
- Land Development Assoc., Kent's Case*, 39 Ch. D. 259.
- Barrow's Case*, 14 Ch. D. 432. (See this case as to the belief that contract was registered not assisting allottee after winding-up.)
- Ex p. Appleyard*, 18 Ch. D. 587.
- Newtownards Gas Co.*, 15 L. R. Ir. 51.
- Vulcan Ironworks Co.*, W. N. 1885, p. 120.
- London Celluloid Co., infra*.
- Government Investment Co. v. Dempsey*, 50 L. J. Q. B. 199.
- Cf. Mudford's Claim*, 14 Ch. D. 634 (but see *ante*, p. 114).
- Johannesburg Hotel Co., supra*.

The contract required by the above section cannot be

Case, 17 Eq. 169; *Adamson's Case*, 18 Eq. 670; *Ferrao's Case*, 9 Ch. 355. But *cf. Cleland's Case*, 14 Eq. 387; *Jones, Lloyd, & Co.*, 41 Ch. D. 159, as to appropriation of present debt to ray future calls.
(a) *Spargo's Case, supra*; *Branksea Island Co.*, 1 Megone 12.

(b) *Pagin & Gill's Case*, 6 Ch. D. 681; *Andress' Case*, 8 Ch. D. 126; *White's Case, supra*.

(c) *Johannesburg Hotel Co. [1891]*, 1 Ch. 119. See table, *infra*.

(d) *Ib., per Fry, L.J.*

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contained in the articles (a). There is one case where it was considered that the articles formed a good contract, but this was a special case, and it would not be safe to rely upon it (b). A contract made with a trustee for a company before its incorporation, and adopted by the company, is within the meaning of this section (c). The document filed must be "a contract **duly made in writing**," nothing short of that will do; a document containing all the terms of the transaction, and executed by one party but neither signed nor assented to by the other party, is not a contract, but merely an offer in writing, and will not suffice, and the subsequent acceptance of the offer makes no difference (d). As a matter of practice, the contract should be signed by all parties, for it is not clear that there is a contract **duly made in writing** unless the acceptance is in writing (e). But the contract need not be made directly between the allottee of the shares and the company, nor need it shew on the face of it which particular shares are to be allotted, although the *onus* lies on the allottee to show that his shares are within the registered contract (f). It is very advisable, however, that the contract should specify the denoting numbers of the shares and names of allottees, as the difficulty of proof after many years might be serious.

The failure of the consideration for the contract is no ground for treating the shares as not being paid-up (g). But in the absence of any consideration, the contract may not be a contract within the section (h).

Registration "at or before issue" means that the issue of shares and the filing of the contract should be substantially part of one and the same transaction; and registration on the morning following the issue may be sufficient (i).

The allotment or the issue of the certificates is not

(a) *Firmstone's Case*, 20 Eq. 524; *Pritchard's Case*, 8 Ch. 956; *Crickmer's Case*, 10 Ch. 614. But see *Miller's Case*, 5 Ch. D. 70, as to qualification shares.

(b) *Appletreewick Lead Mining Co.*, 18 Eq. 95; but see *Firmstone's Case*, *supra*.

(c) *Hartley's Case*, 10 Ch. 157. See *Spiller v. Paris Skating Rink Co.*, 7 Ch. D. 368.

(d) *New Eberhardt Co., Ex p. Menzies*, 43 Ch. D. 118.

(e) See *per Cotton, L. J.*, in *New Eberhardt Co.*, *supra*.

(f) *Common Petroleum Engine Co., Elsner and McArthur's Case* [1895], 2 Ch. 759; *Rushworth's Case*, 66 L. T. 48; *Buenos Ayres Water Co.*, W. N. (1875) 59; *Delta Syndicate*, 30 Ch. D. 153.

(g) *Mege & Angier's Case*, W. N. 1875, p. 208.

(h) *Anderson's Case*, 7 Ch. D. 75; *Crickmer's Case*, 10 Ch. 614. See *Gold Co.*, 11 Ch. D. 701; and see *post*, p. 132.

(i) *Tunnel Mining Co., Pool's Case*, 35 Ch. D. 579; *Anglo-Colonial Syndicate*, 65 L. T. 847.

necessary to the issue of the shares; but the shares are issued if the holder has obtained a complete right to them (a).

It is said, on high authority, that where the liability of the members of a company is limited by charter, statute, or registration, it is, to say the least, questionable whether it can lawfully issue **paid-up shares at a discount** (b), but new shares in companies governed by the Companies Clauses Consolidation Act (c) can be issued at a discount, with certain restrictions; so also can fully paid-up original **stock**, and for payment either in cash or for other consideration (d), but whether original shares liable to calls can be so issued is an open question (e). Such companies, if authorized to borrow money, may also issue debentures or debenture stock at a discount (f).

In companies limited by shares, and formed and registered under the Act of 1862, shares cannot be issued at a discount although under a registered contract (g). And on winding-up, holders of shares so issued are liable, even where all the creditors have been paid, to pay up their shares in full for the purpose of adjusting the rights *inter se* of the contributories (h); and this is so notwithstanding the *dictum* of Lord Herschell in *Ooregum Gold Co. v. Roper* (i) to the contrary effect. But a purchaser for value without notice is not liable (k). Nor can shares be issued as fully paid-up, as a **bonus** to the shareholders, although a contract to do so has been made without any

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(a) *Blyth's Case*, 4 Ch. D. 140; *Barangah Oil Co.*, 38 Ch. D. 702; *Bush's Case*, 9 Ch. 554. See *Clarke's Case*, 8 Ch. D. 635.

(b) See Lindley (5th ed.), 396. *Hoole v. Great Western Rail. Co.*, 3 Ch. 262; and as to cost-book companies, 32 & 33 Vict. c. 19, s. 12.

(c) See 26 & 27 Vict. c. 118, s. 21; 30 & 31 Vict. c. 127, s. 27; 32 & 33 Vict. c. 48, ss. 5-7.

(d) *Webb v. Shropshire Railways Co.* [1893], 3 Ch. 307.

(e) *Ooregum Gold Mining Co. v. Roper* [1892], A. C. 125; *Hirsche v. Sims* [1894], A. C. 654; *Almadu and Tirito Co.*, 38 Ch. D. 415. See also as to what amounts to issue at a discount, *Addlestone Linoleum Co.*, 37 Ch. D. 191; *London Celluloid Co.*, *Bayley & Hanbury's Cases*, 39 Ch. D. 190;

Trevor v. Whitworth, 12 App. Cas. 409; *New Chile Gold Mining Co.*, 38 Ch. D. 475; *Zoedone Co., Ex p. Higgins*, 60 L. T. 383; *Klenck v. East Indian Co. for Exploration, &c.*, 16 C. of S. Cas. 271 (Sc.). As to the issue of debentures at a discount being allowed, see *Regent's Canal Ironworks Co.*, 3 Ch. D. 43; *Campbell's Case*, 4 Ch. D. 470; *Anglo-Danubian Steam Nav. Co.*, 20 Eq. 339.

(f) *Weymouth and Channel Islands Steam Packet Co.* [1891], 1 Ch. 66.

(g) *Supra*; acted on by Vaughan Williams, J., in *Pioneers of Mashonaland Co.* [1893], 1 Ch. 731.

(h) *Railway Time Tables, &c., Co., Ex p. Welton* [1895], 1 Ch. 255.

(i) *New Chile Gold Mining Co.*, W. N. [1892], 193.

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fraud and registered under s. 25 (a). If the consideration payable for shares issued by a company is illusory, or permits an obvious money measure to be made shewing that discount has been allowed, filing the contract will not relieve the allottee from the obligation to pay the full value of the shares, or the amount of the discount in cash; the Court is not bound, however, to inquire whether the price was reasonable, or whether what was given for the shares had a cash value equal to the nominal value of the shares (b). Shares issued at a discount or bonus shares cannot, even before the winding-up, be repudiated after the allottee has been registered and has assented to the shares standing in his name, or if some new agreement to keep the shares can be implied from the conduct of the party (c). Payment to brokers in the ordinary course of business of a fair and just commission for placing shares is not *ultra vires*, and does not amount to an issue of the shares at a discount (d), but if the payments are not ordinary commissions, but improper payments of the nature of bribes, such payments are illegal (e). "Underwriting at a discount" only means at a commission (f). S. 25 does not provide for any portion of the money value of shares not being paid, but only that it may be paid in kind as well as by mere money.

The liquidator is not debarred from requiring payment of calls on the ground that the company, which has agreed to register the contract, is taking advantage of its own wrong by suing for calls which could not have been sued for if the contract had been registered (g).

S. 25 does not throw upon any particular party to the contract the obligation of registering the contract. It is for those who seek to enforce the contract to take shares to put themselves in a position to be able to complete their

(a) *Eddystone Marine Insurance Co.* [1893], 3 Ch. 9; *Westmoreland Green, &c., Slate Co.*; *Blind's Case* [1893], 2 Ch. 612. *Firmstone's Case*, 20 Eq. 524; *Uruguay, &c., Ry. Co.*, 11 Ch. D. 372.

(b) *Theatrical Trust, Ltd.*; *Chapman's Case* [1895], 1 Ch. 771; *Elsner and McArthur's Case* [1895], 2 Ch. 759.

(c) *Railway Time Tables Publishing Co.*, 42 Ch. D. 98, which appears to practically overrule *Midland Electric Light and Power Co.*, 60 L. T. 666; *Eddystone*

Marine Insurance Co., *supra*, per Wright, J.

(d) *Metropolitan Coal Consumers' Assoc. v. Scrimgeour* [1895], 2 Q. B. 606.

(e) *Faure Electric Accumulator Co.*, 40 Ch. D. 141, as to which see *Metropolitan Coal Consumers' Assoc. v. Scrimgeour*, *supra*.

(f) *Licensed Victuallers' Mutual Trading Assoc.*, 42 Ch. D. 1. *Faure Electric Accumulator Co.*, *supra*, was not cited.

(g) *London Celluloid Co.*, *supra*.

contract; that is to say, it is for the company effectually to perform that part of the contract which is necessary in order to make the shares fully paid-up (*a*).

A claim for **damages for calls**, where a contract has not been registered under the section, has been allowed (*b*); but a similar claim by preference shareholders has been dismissed, and the above cases are virtually overruled (*c*). The allottee should rescind the contract before the winding-up (*c*). But the allottee may escape liability if he can shew that his name has not been placed on the register with his assent or knowledge; and where the contract is that fully paid-up shares shall be given and accepted, a contract to take unpaid shares cannot be enforced (*d*).

Where shares must be treated as unpaid because there is no registered contract, and the original person to whom they were allotted transfers them to a **stranger who has no notice** of the circumstances (*e*), and who takes the shares on the faith of the certificates issued by the company representing them as fully paid-up, the shares under such circumstances will be deemed to be paid-up; and, moreover, a person to whom the shares are subsequently transferred, whether with or without notice, holds the shares as paid (*f*). The *onus* of proving that there has been notice that shares are not fully paid-up lies on the liquidator (*g*).

But if the person to whom such shares were transferred had notice of the circumstances, then as regards him,

(*a*) *Barangah Oil Co., Arnot's Case*, 38 Ch. D. 702; *Mudford's Claim*, 14 Ch. D. 634. See *Tunnel Mining Co., Pool's Case*, 35 Ch. D. 579.

(*b*) *Mudford's Claim*, *supra*; *Ex p. Appleyard*, 18 Ch. D. 587. But *qu.*, and see *Houldsworth v. City of Glasgow Bank*, 5 App. Cas. 317.

(*c*) *Addlestone Linoleum Co.*, 37 Ch. D. 191; *Railway Time Tables Co.*, *supra*, and cited p. 233.

(*d*) *Barangah Oil Co., Arnot's Case*, *supra*; *Macdonald, Sons & Co.* [1894], 1 Ch. 89. *Aliter* if he consents, *Oakes v. Turquand*, 2 H. L. 325; *Ex p. Sandys*, 42 Ch. D. 98; *Eddystone Marine Insurance Co.*, *per Wright, J.* [1893], 3 Ch. 9.

(*e*) *Aliter* if with notice, *London Celluloid Co., Bayley & Hanbury's Cases*, 39 Ch. D. 190.

(*f*) *Burkinshaw v. Nicolls*, 3 App. Cas. 1004; *A. W. Hall & Co.*, 37 Ch. D. 712; *New Chile Gold Co.*, W. N. (1892), p. 193; *Parbury's Case* [1896], 1 Ch. 100; *London Metallurgical Co. v. Coles*, 11 T. L. R. 377; *Norham Castle Ship Co.*, 4 Times L. R. 303; *Stapleford Colliery Co., Barrow's Case*, 14 Ch. D. 432; *Caribbean Co., Crickmer's Case*, 10 Ch. 614 (where there was notice); *Vulcan Iron-works Co.*, W. N. 1885, p. 120. *Cf. Heaton's Steel, &c., Co., Blyth's Case*, 4 Ch. D. 140. As to nominees, see *Carling's Case*, 1 Ch. D. 115. As to notice to principal of agent's knowledge, see *Halifax Sugar Refining Co.*, W. N. 1891, pp. 2, 29. As to striking name off register, *Railway Time Tables Publishing Co.*, 42 Ch. D. 98.

(*g*) *A. W. Hall & Co.*, *supra*.

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and also any person to whom they may be subsequently transferred with such notice, the shares are treated as unpaid.

This doctrine is not confined to purchasers from the person to whom the certificate is issued; that person himself can rely on the certificate as estopping the company from denying his title to the shares, **provided that he has acted on the certificate, and altered his position in reliance thereon**, *e.g.* by entering into a contract to sell the shares and rendering himself liable to the purchasers (*a*).

Where shares, which ought to have been issued as fully paid-up, have been issued **without registration of a contract** to persons ignorant of the omission to register, the Court will, in some cases, on an application under s. 35 of the Act of 1862, supported by evidence of the solvency of the company at the date of the application, to which the company consents, order the names of the holders to be removed from the register and new shares to be issued to them after registration of the contract (*b*). But the Court has not power to order the contract to be registered *nunc pro tunc* (*c*). And where the company is ordered to be wound up before the application is heard, the register can only be rectified on the terms that due provision be made for all the company's debts accrued between the date of the issue of the shares and the date of the notice of motion for rectification (*d*).

General liability, and how avoided.—It is necessary, here, to consider a class of contributories, which must be distinguished from cases where shareholders are relieved against voidable contracts under s. 35, *viz.* those who acknowledge that they became shareholders, but seek to avoid liability on the ground that they ceased to be shareholders at the time of the winding-up; as, for instance, by (A) forfeiture, surrender, or (B) transfer of shares. For every one who has at any time become a shareholder, and is unable to shew that at the date of the order he had ceased to belong to the company, either by the forfeiture

(*a*) *Balkis Consolidated Co. v. Tomkinson* [1893], A. C. 396. As to the effect and meaning of a "certification," see *Bishop v. Balkis*, 25 Q. B. D. 512.

(*b*) *Denton Colliery Co.*, 18 Eq. 16 (on petition); *New Zealand Kapanga Mining Co.*, *ib.* 17; *Broad Street Station Dwellings*

Co., W. N. 1887, p. 149; *Darlington Forge Co.*, 34 Ch. D. 522 (on motion); *Hartley's Case*, 10 Ch. 157 (on summons).

(*c*) *Harwich Harbour, &c., Co.*, 45 L. J. Ch. 56.

(*d*) *Preservation Syndicate* [1895], 2 Ch. 768.

or transfer of his shares, or in some authorized manner, must be placed upon the list (a). If a person ought to be, but is not on the register, he cannot escape liability (b).

There may be some cases in which a member—such as a participating policy-holder who has assigned his policy—may cease to be liable as a contributory, although no other person becomes liable to contribute in his stead (c).

To make the assignee a member, the provisions of the articles as to the steps necessary for the admission of members must be complied with, for, otherwise, there will be no case to rectify the register (d).

There is no provision in the Act of 1862 (e) (corresponding to s. 116 of the Companies Act of 1856), directing that creditors of limited companies subject to a winding-up order in respect to liabilities incurred under a contract of unlimited partnership should lose none of their remedies (f). Where an industrial society under the Act of 1852, being in difficulties, had, in order to be wound up, become registered under the Industrial Societies Act of 1862, which incorporated the Companies Act of 1862, it was held that the members of the society were not liable to contribute beyond the full amount of their shares in respect of the rights of persons who were creditors of the society when the winding-up order was made (g). S. 194 of the Act of 1862, which provides that registration under that Act shall not affect obligations incurred previously to registration, does not apply to the case of a pure contributory (g). It is doubtful, however, whether in the case of an unlimited company registered with limited liability and subsequently wound up, creditors in respect of debts contracted by the company before the registration with limited liability could not, so far as their rights are concerned, enforce them in some other way than in the winding-up; but there are no cases on this subject.

Validity of forfeitures and surrender of shares.—It is now clear that a company limited by shares has no power to

(a) *Per* Lord Chelmsford in *Spackman v. Evans*, L. R., 3 H. L. 171, 238. See *Addison's Case*, 5 Ch. 294; *Bell's Case*, 4 App. Cas. 547.

(b) *Winstone's Case*, 12 Ch. D. 239, 249.

(c) *Brown's Case, Re Albion Life Ass. Soc.*, 18 Ch. D. 639.

(d) *Sander's Case, Re Albion Life Ass. Soc.*, 20 Ch. D. 403.

(e) See, however, the provisions

of s. 196 (5), which seem sufficient.

(f) *Ex p. Fountain, Re Sheffield and Hallamshire, &c., Industrial Soc.*, 34 L. J. 593. See *Lethbridge v. Adams, Ex p. Liquidator of International Ass. Soc.*, 13 Eq. 547. See further as to this under "What Property is divisible, and Priority," *ante*, p. 119.

(g) *Ex p. Fountain, supra*.

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purchase its own shares, notwithstanding any authority in its memorandum (a). There is no provision in the Act of 1862 relating to the forfeiture or the surrender of shares (b). But it is established by the cases that a company can only accept surrenders of shares which are *bonâ fide* and for its good, if it has been authorized by the articles as originally framed (c), or as altered by special resolution (d). And the directors cannot improperly reduce the capital by accepting surrenders (e). The directors cannot exercise their powers of forfeiting shares for the purpose of relieving a member from liability, but only where the cancellation is *bonâ fide* for the benefit of the company (f). There appears, however, to be an exception to this rule where the release from liability is a condition of a compromise of a *bonâ fide* dispute (g).

As the result of the cases decided in the winding-up of the *Agriculturist Cattle Insurance Co.*, it seems that a release from liability, by a surrender or forfeiture of shares which was *ultra vires*, may be rendered unimpeachable by showing the acquiescence of all the shareholders; and that a presumption of acquiescence will arise from the notoriety of the arrangement, and the time it has been left unimpeached (h). But lapse of time alone will not render valid such a transaction (i).

(a) *Trevor v. Whitworth*, 12 App. Cas. 409. See *General Property Co. v. Matheson*, 16 C. of S. Cas. 282 (Sc.), *General Finance Co.*, 23 L. R. Ir. 173; *Mersina Construction Co.*, 5 T. L. R. 680; *Castle Urag Steamship Co.*, 4 Times L. R. 302; cf. *Dronfield Coal Co.* (No. 1), 17 Ch. D. 76.

(b) But see Arts. 17, 18, 19, of Table A. And see the provisions of the Companies Clauses Acts, 1845 and 1863.

(c) *Barton's Case*, 4 Drew. 535; 4 De G. & J. 46; *Stanhope's Case*; 1 Ch. 161; *Snell's Case*, 5 Ch. 22; *Johnson v. Lyttle's Iron Agency*, 5 Ch. D. 687.

(d) *Teasdale's Case*, 9 Ch. 54; *Hope v. International Financial Soc.*, 4 Ch. D. 327; *Dronfield Coal Co.* (No. 1), 17 Ch. D. 76; *Wright's Case*, 7 Ch. 55. As to surrenders being illegal or not *bonâ fide*, see also *Morgan's Case*, 1 De G. & Sm. 750; 1 Mac. & G. 225; *Lawe's*

Case, 1 D. M. & G. 421; *Bennett's Case*, 5 D. M. & G. 284; *Addison's Case*, 5 Ch. 294.

(e) *Hope v. International Financial Soc.*, *supra*.

(f) *Stanhope's Case*, 1 Ch. 161; *Gowers' Case*, 6 Eq. 77; *Spackman's Case*, 34 L. J. Ch. 321; *Spackman v. Evans*, L. R. 3 H. L. 171; *Ex p. Littledale*, 9 Ch. 257.

(g) *Lord Belhaven's Case*, 3 De G. J. & S. 41; *Bath's Case*, 8 Ch. D. 334; *Hesketh's Case*, 13 Ch. D. 693. But see *Spackman v. Evans*, L. R. 3 H. L. 171; *Dixon v. Evans*, L. R. 5 H. L. 606; *Fletcher's Case*, 37 L. J. Ch. 49.

(h) *Brotherhood's Case*, 31 Beav. 365; 4 De G. F. & J. 566; *Evans v. Smallcombe*, L. R. 3 H. L. 249; *Phosphate of Lime Co. v. Green*, L. R. 7 C. P. 43; *King's Case*, 2 Ch. 714; *Houldsworth v. Evans*, L. R. 3 H. L. 263. See *Ashbury v. Watson*, 30 Ch. D. 376.

(i) *Spackman v. Evans*, *supra*;

If shares have been irregularly forfeited, the holder will remain a contributory (a).

As to surrenders of shares before the completion of the contract, or entry on the register, see the cases below (b).

If there are surplus assets, a shareholder may desire to set aside a forfeiture of shares, and in a winding-up the matter can be brought before the Court by summons (c). But he may lose his claim to relief by lying by for more than six years (d). The liquidator has no power to cancel a forfeiture validly made before the commencement of a voluntary winding-up (e).

Although a person whose shares have been forfeited within a year before a winding-up, cannot be placed on the A list, he may be settled on the B list as a past member (f); but if the forfeiture is not complete, he cannot escape liability as a present member (g). So, also, where the forfeiture is not *bonâ fide*.

The same rules are applied to a surrender within a year before winding-up.

Transfer of shares.—There is no obligation on the transferor beyond finding a transferee legally competent to take the shares (h). Transferors of shares are not contributories as present members, if the transferees have accepted the transfers, and if the company have accepted them as shareholders.

When a company becomes insolvent, it is, unfortunately for creditors, a common practice to transfer shares to men of straw in order to get rid of liability. With the exception, probably, of a transfer of qualification shares by a director (i), it seems, as the result of the cases, that notwithstanding that a shareholder knows a company to be hopelessly insolvent and endeavours to avoid liability

Stanhope's Case, 1 Ch. 161. See *Esparto Trading Co.*, 12 Ch. D. 191.

(a) *Esparto Trading Co.*, *supra*; *Bottomley's Case*, *infra*; *Garden Gully Mining Co. v. McLister*, 1 App. Cas. 39.

(b) *Adams's Case*, 13 Eq. 474; *Snell's Case*, 5 Ch. 22; *Hall's Case*, 5 Ch. 707.

(c) *Bottomley's Case*, 16 Ch. D. 681. See *Sweny v. Smith*, 7 Eq. 324, as to an action. See *Strick v. Swansea Tin Plate Co.*, 36 Ch. D. 558, as to an expelled member having no claim in a division of

surplus assets.

(d) *Rule v. Jewell*, 18 Ch. D. 660, as to delay in making claim.

(e) *Dawes' Case*, 6 Eq. 232. See *Austin's Case*, 24 L. T. 932.

(f) *Bridger's Case*, 4 Ch. 266; *Dawes' Case*, 6 Eq. 232; *Bath's Case*, 8 Ch. D. 334.

(g) *Bigg's Case*, 1 Eq. 309.

(h) *Lumsden's Case*, 4 Ch. 31. As to married women, see *Angas's Case*, 1 De G. & S. 560, and pp. 151–153, 172.

(i) *Gilbert's Case*, 5 Ch. 559, cited in *South London Fish Market Co.*, 39 Ch. D. at p. 331.

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by a transfer of his shares, such a transferor will not be liable as a contributory, although the shares be worthless, and the transferee a man of straw, and although a valuable consideration be expressed but be not in fact paid, or the transferor may even have paid the transferee to take them, provided the transaction is not colourable and fictitious, but *bonâ fide* an absolute out-and-out disposal of the property without any trust or reservation for the benefit of the transferor (a). So, members of a company may transfer their shares at any time before a resolution for voluntary liquidation has been passed, notwithstanding they know that such a resolution is about to be passed (b). If, however, the transferor retains any interest in the shares, and the transaction is not open and *bonâ fide*, but colourable and fictitious, the transferor remains liable (c).

So, where the company is at an end by transfer of its business and property to another company, it has been held that the company, as far as the existence of shares is concerned, may be considered at an end, and that after the company has ceased to have property or shares it cannot be said to be a company in which the shareholders can transfer, so as to enable them to say that they are no longer shareholders (d).

The above class of cases is to be distinguished from the decision in the case of *Tennent v. City of Glasgow Bank* (e), which was a case of repudiating shares on the ground of misrepresentation (f).

In a company where the directors have a discretion as to the acceptance of a proposed transferee, and they are

(a) See *De Pass's Case*, 4 De G. & J. 544; *Weston's Case*, 4 Ch. 20; *Slater's Case*, 35 Beav. 391. See s. 22. But see *Tennent v. City of Glasgow Bank*, *infra*. The American Courts have held such transfers to be void: see Angell and Ames on Corp., s. 623. And s. 35 of the Stannaries Act, 1869, makes them fraudulent: see *Chynoweth's Case*, 15 Ch. D. 13; and see Stannaries Act, 1887, s. 22, invalidating relinquishment of shares if delivered within six weeks before resolution to wind up.

(b) *Taurine Co.*, 25 Ch. D. 118, distinguishing *Chappell's Case*, 6 Ch. 902; *Allin's Case*, 16 Eq. 449; and *Tennent v. City of Glasgow Bank*, 4 App. Cas. 615. See *Hornby's*

Case, 16 W. R. 1164.

(c) *Hyam's Case*, 1 De G. F. & J. 75; *Costello's Case*, 2 De G. F. & J. 302 (said to be between *De Pass's Case* and *Hyam's Case*); *Gilbert's Case*, 5 Ch. 559; *Lund's Case*, 27 Beav. 465; *Ex p. Parker*, 2 Ch. 685; *Hatton's Case*, 8 Jur. N. S. 380; *Budd's Case*, 30 Beav. 143.

(d) *Chappell's Case*, 6 Ch. 902; *Allin's Case*, 16 Eq. 449.

(e) 4 App. Cas. 615. See also *City of Glasgow Bank*, *Mitchell's Case*, and *Rutherford's Case*, *ib.* 548; *Mitchell v. City of Glasgow Bank*, *ib.* 624.

(f) Per Cotton, L.J., *Taurine Co.*, 25 Ch. D. at p. 131.

deceived by the transferor as to the nature of the transaction, the latter will remain liable as a contributory (a).

A person cannot escape liability by executing a transfer to a person who never accepts it, and without his authority; although the transferor's name has been taken off the register (b). Such a transfer may be confirmed by acquiescence before the winding-up (c).

A transfer taken with the object of putting an end to a winding-up petition by a shareholder is not *bonâ fide*, and the transferor will be put on the list of contributories (d).

In voluntary winding-up, transfers of shares (except transfers made to or with the sanction of the liquidators) taking place after the commencement of the winding-up are void (e). The commencement of the winding-up is the date of passing the second resolution (f). In compulsory winding-up or winding-up under supervision, transfers made between the commencement of the winding-up (g) and the order for winding-up (h), or after the order (i), are, unless the Court otherwise orders, void (f); but void only so far as regards any effect to be given them by or against the Company (k). As between the parties the transfer is binding (k). So, too, are contracts made but not completed before the commencement of the winding-up (l). But the transferee is not entitled to be registered as owner without the sanction of the Court (m). The Court has power to order the rectification of the register by the insertion of such transferee's name, but the exercise of that power is discretionary, and such an order should only be made on strong grounds (m).

Transferees of shares, who have become shareholders after the presentation of the petition, have been heard on

(a) *Ex p. Kintrea*, 5 Ch. 95; *Payne's Case*, 9 Eq. 223; *Roger's Case*, 25 L. T. 406; *Gustard's Case*, 8 Eq. 438; *Williams's Case*, 9 Eq. 225, n.; *Williams's Case*, 1 Ch. D. 576. A decision in the European Arbitration (*Murgatroyd's Case*, L. T. 146) goes considerably beyond this. And see *Master's Case*, 7 Ch. 292.

(b) *Hennessey's Case*, 3 De G. & S. 191; 2 M. & G. 201; *Heritage's Case*, 9 Eq. 5; *Cartmell's Case*, 9 Ch. 691. See also *Corfield's Case*, W. N. 1873, p. 186, as to a fictitious transferee.

(c) *Lumsden's Case*, 4 Ch. 31; *Mitchell's Case*, 9 Eq. 363; *Gooch's*

Case, 14 Eq. 454; 8 Ch. 266.

(d) *Eyre's Case*, 31 Beav. 177; *Lankester's Case*, 6 Ch. 905, n., 910. See *Chappell's Case*, 6 Ch. 902.

(e) S. 131 of 1862 Act.

(f) *Hornby's Case*, 19 L. T. 237.

(g) See *ante*, Chapter VI., p. 80.

(h) S. 153 of 1862 Act.

(i) *Onward Building Society* [1891], 2 Q. B. 463.

(k) *Rudge v. Bowman*, L. R. 3 Q. B. 689.

(l) *Chapman v. Shepherd*, L. R. 2 C. P. 228.

(m) *Onward Building Society*, *supra*.

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the hearing of the petition, on the ground that s. 153 does not apply (a).

When there has been unnecessary delay on the part of the vendor of shares in compelling the purchaser to complete the transfer, the former will be placed on the list if he is the registered holder at the commencement of the winding-up (b). But the transferee's name will be substituted where the omission to register is due to the neglect of the company (c), and there has been no unnecessary delay by the parties, and the transfer is in other respects complete before the commencement of the winding-up; unless there is some good reason to the contrary (d), or the transfer is one which the directors were not bound to accept (e). In order to fix the company with delay, it is material to shew that there has been one board meeting between the time of leaving the transfer and the commencement of the winding-up; and if there has been such a meeting, the Court will order the transfer to be completed where there has been no delay or neglect by the parties (f). The transferee will not be put on the list in place of the transferor at the request of the company where they have refused to register the transferee before the winding-up (g).

Misrepresentation.—Persons who have been induced to take shares by reason of the fraudulent concealment and misrepresentation of the directors, and have become legal shareholders, are not entitled to the relief as against

(a) *Tumacacori Mining Co.*, 17 Eq. 534, 537.

(b) *Ward and Henry's Case*, 2 Ch. 431; *Walker's Case*, 6 Eq. 30; *Read's Case*, 3 Eq. 84, which see as to an indemnity from purchaser. As to an invalid transfer, see *Norwich Equitable Fire Assee. Co., England's Case*, W. N. 1884, p. 174.

(c) *Manchester and Oldham Bank*, 54 L. J. Ch. 926; *Anglo-Indian and Colonial Industrial Inst.*, *Montagu's Case*, *Grey's Case*, 59 L. T. 208; *Union Debenture Co. v. Fletcher*, 11 T. L. R. 472. As to the measure of damages for neglect of company to register transfer of shares, see *Skinner v. City of London Marine Insce. Corp.*, 14 Q. B. D. 882.

(d) *Fyfe's Case*, 4 Ch. 768; *Lowe's Case*, 9 Eq. 589; *Ward*

and *Garfit's Case*, 4 Eq. 189; *Fox's Case*, 5 Eq. 118; *Lyster's Case*, 4 Eq. 233.

(e) *Musgrave and Hart's Case*, 5 Eq. 193; *Shipman's Case*, *ib.* 219; *Ex p. Kintrea*, *supra*; *Marino's Case*, 2 Ch. 596; *Barned's Banking Co.*, 3 Ch. 105; *Holden's Case*, 8 Eq. 444; *Ex p. Penney*, 8 Ch. 446; *Coalport China Co.* [1895], 2 Ch. 404. As to when the Court will exercise the discretion of the directors where they had power to decline to register, see *Lindley*.

(f) *Nation's Case*, 3 Eq. 77; *Shepherd's Case*, 2 Ch. 16; *Ward and Henry's Case*, *ib.* 431; *Hill's Case*, 4 Ch. 769, n.

(g) *Sichell's Case*, 3 Ch. 119. As to laches by liquidator, *Sand's Case*, 32 L. T. 299.

creditors (a), or their co-contributories (b), which might have been obtained between the shareholders and the company. And they cannot plead the fact of their having been so induced as a reason for repudiating their shares and for being struck off the list of contributories, if they have not avoided the contract, or taken steps equivalent to it (c), before the commencement of a winding-up by or under the supervision of the Court, or a resolution to wind up voluntarily (d), or before stoppage and the publication of a notice by the directors of a meeting to wind up (e), or, probably, before the company has become insolvent, and has stopped payment, even irrespective of proceedings to a winding-up (f).

The above rule only applies where the contract is voidable, and not where it is void. Though even where the contract is void, the shareholder by delay and acquiescence may debar himself of his right to have the register rectified (g).

But if, before the commencement of the winding-up, or the events above mentioned, a shareholder has repudiated his shares on the ground of fraud, and has obtained the removal of his name from the register, he will not be put on the list of contributories (h). And, moreover, although the name has not been removed, if he has instituted proceedings against the company, he will on establishing his case, although a winding-up order is made before judgment, be entitled to have his name removed from the list (i). So, also, if there have been no laches on the part of the shareholder in procuring himself to be removed after he

See supra
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(a) *Black & Co.'s Case*, 8 Ch. 254.

(b) *Burgess' Case*, 15 Ch. D. 507.

(c) *Reese River Mining Co. v. Smith*, 2 Ch. D. 604; *ib.*, 4 H. L. 64; *Kent v. Freehold Land, &c., Co.*, 3 Ch. 493.

(d) *Oakes v. Turquand*, L. R. 2 H. L. 325; *Lennox Publishing Co., Ex p. Storey*, 62 L. T. 791. See *Henderson v. Royal British Bank*, 7 D. & B. 356; *Houldsworth v. City of Glasgow Bank*, 5 App. Cas. 317; *East Broken Hill v. Mallaby-Deely*, 11 T. L. R. 465.

(e) *Alexander Mitchell's Case*, 4 App. Cas. 548; *Muir v. City of Glasgow Bank*, *ib.* 337; extending *Stone v. City and County Bank*, 3 C. P. D. 282, as to a voluntary

winding-up. See *Tennent v. City of Glasgow Bank*, 4 App. Cas. 615; *London and Leeds Bank, Ex p. Carling*, 56 L. J. Ch. 321; *Marshall v. Glamorgan Iron Co.*, 7 Eq. 129, 137; *Western Bank of Scotland v. Addie*, 1 H. L., Sc., 145.

(f) *Tennent v. City of Glasgow Bank*, 4 App. Cas. at p. 622.

(g) *Railway Time Tables, &c., Co., Ex p. Sandys*, 42 Ch. D. 98; *Wynne's Case*, 8 Ch. 1002.

(h) *Wright's Case*, 7 Ch. 55; *Scottish Petroleum Co.*, 23 Ch. D. 413.

(i) *Reese River Mining Co. v. Smith*, 2 Ch. D. 604; *ib.* 4 H. L. 64. But see *Tennent v. City of Glasgow Bank*, *supra*; and *Taurine Co., supra*.

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has repudiated his shares (a); but a mere repudiation without any further steps is not sufficient (b), in the absence of very exceptional circumstances (c). Two months' delay only has been held to be fatal to the shareholder (d).

After a company has gone into liquidation, rescission and *restitutio in integrum*, on the ground of fraudulent misrepresentations, are impossible, and it has been held that no claim can then be made against the liquidators for damages in this respect (e).

Of course, the shareholders may have a remedy against the directors personally (f).

In the case of a company formed and registered under the Act of 1862, any person can obtain a copy of the memorandum, and an allottee cannot avoid liability as a contributory on the ground that the objects of the company as formed are materially different from those as projected, or that there is a discrepancy between the prospectus and the memorandum, if he has kept his shares until the winding-up without taking steps, within a reasonable time after the formation of the company, to ascertain its objects as formed (g). Much more, however, is required to preclude repudiation where the company is a going concern than after a winding-up (h).

Where it is alleged that the prospectus contained a material misrepresentation, a statement made by the chairman of the company after its formation in a speech to a meeting of shareholders is not admissible evidence against the company, upon an application to rectify the register (i).

(a) *Ashley's Case*, 9 Eq. 263; *Scholey v. Central Ry., &c., Co.*, *ib.* 266; *McNiell's Case*, 10 Eq. 503; *Pawle's Case*, 4 Ch. 497.

(b) *Hare's Case*, 4 Ch. 503. See *Fox's Case*, 5 Eq. 118; *Walker's Case*, 6 Eq. 30; *Scottish Petroleum Co.*, 23 Ch. D. 413.

(c) *McNiell's Case*, *supra*.

(d) *Kent v. Frechold Land, &c., Co.*, 3 Ch. 493; *Reese River Mining Co. v. Smith*, *supra*. See the cases under s. 35, p. 231, and *Whitehouse's Case*, 3 Eq. 790.

(e) *Houldsworth v. City of Glasgow Bank*, 5 App. Cas. 317; *Western Bank of Scotland v. Addie*, 1 H. L. (Sc. App.) 145; *Addlestone Linoleum Co.*, 37 Ch. D. 191. But see *Hall v. Old Talargoch Mining Co.*, 3 Ch. D. 749, distinguished in *Stone v. City and*

County Bank, 3 C. P. D. 282, 295. And *qu. now Mudford's Claim*, 14 Ch. D. 634; *Ex p. Appleyard*, 18 Ch. D. 587. See *Burgess' Case*, 15 Ch. D. 507.

(f) As to which, see *post*, p. 221.

(g) *Peel's Case*, 2 Ch. 674; *Lawrence's Case*, *ib.* 412; *Wilkinson's Case*, *ib.* 536; *Oakes v. Turquand*, L. R. 2 H. L. 325; *Downes v. Ship*, L. R. 3 H. L. 343; *Stewart's Case*, 1 Ch. 574. As to a misstatement of objects for which shares are issued, see *Edgington v. Fitzmaurice*, 29 Ch. D. 459. See, under the older Acts, *Goldsmid's Case*, 16 Beav. 262; *Meyer's Case*, *ib.* 383.

(h) *Peel's Case*, *supra*; *Hare's Case*, 4 Ch. 503.

(i) *Devala Provident Mining Co.*, 22 Ch. D. 593.

Agreed to become members but not registered.—Persons who have agreed to become shareholders, although their names are not *de facto* on the register, are liable as contributories (*a*). This class will include, first, allottees and scrip-holders, and secondly, persons who have agreed to take transfers of shares but have not been registered. An agreement to take shares need not, in general, be in writing, but there are exceptions, as in the case of a mutual marine insurance company (*b*).

A man may also become a contributory to a company by his acts, although he has not made himself legally a member of it (*c*). So, also, where shares have been applied for in the name of another person without his authority, the applicant is a contributory (*d*). But even in this case there must be an actual contract by the applicant to take shares (*e*). But the Court will not rectify the register, under s. 35, by removing from the list of contributories the name of a transferor who has neglected to take steps to procure the registration of the transfer, as it is his duty to see that everything is complete (*f*). So, if the conditions of the articles in respect of transfers have not been complied with by the transferor and transferee before the winding-up, the Court cannot interfere or substitute its discretion for that required from the directors (*g*).

Contract to take fully paid shares.—To enable it to be said that any one has agreed to become a member, and therefore is a contributory, it must be shewn either that with his own assent and with his own knowledge his name has been entered as the holder of the shares on something which may be considered a register of members (*h*), or it must be shewn that a contract was entered into by him with the company which ought to be specifically performed (*i*). Therefore if the only contract is a contract to take fully

(*a*) S. 23. See *Portal v. Emmens*, 1 C. P. D. 664.

(*b*) *London Marine Insee. Assoc.*, 4 Ch. 611; 30 Vict. c. 23; 39 Vict. c. 6, s. 2.

(*c*) *Per Lord St. Leonards, Spackman v. Evans*, L. R. 3 H. L. 171, 208.

(*d*) *Pugh and Sharman's Case*, 13 Eq. 566.

(*e*) *Britannia Fire Assoc., Ltd., Coventry's Case* (1891), 1 Ch. 202.

(*f*) *Gustard's Case*, 8 Eq. 438; *Shepherd's Case*, 2 Ch. 16; *Ward*

and Henry's Case, *ib.* 431; *Stewart's Case*, 1 Ch. 574. See also *Head's Case*, 3 Eq. 84; *White's Case*, *ib.* 86.

(*g*) *Marino's Case*, 2 Ch. 596; *Musgrave and Hart's Case*, 5 Eq. 193; *Walker's Case*, 2 Eq. 554.

(*h*) *Arnot's Case*, 36 Ch. D. 702; *Ex p. Cammell* [1894], 2 Ch. 392.

(*i*) *Arnot's Case*, 36 Ch. D. 702; *Macdonald, Sons & Co.* [1894], 1 Ch. 89; *Ex p. Sandys*, 42 Ch. D. 98; *Eddystone Marine Insurance Co., per Wright, J.* [1893], 3 Ch. 9.

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paid shares, the party cannot be put on the register in respect of shares involving any liability to pay, for there is no contract to take any such shares (*a*).

Where the person is actually on the register of members different considerations apply, and unless the provisions of s. 25 of the Act of 1867 have been complied with, the person is liable to pay their full amount (*b*).

Past members.—Although a person is removed from the list of present members, his liability to be put on the list as a past member still exists (*c*). If the members at the date of the winding-up of a company formed under the Act, or of an existing company registered compulsorily or voluntarily under the Act (*d*), are unable to satisfy all the claims upon them, those who have ceased to be members within a year of the winding-up are liable to contribute; but the liability of members of this class is subject to important restrictions or limitations, which we shall now shortly consider under the following heads:—

(1.) Although those past members only are liable who have ceased to be members within a year of the winding-up (*e*), yet, to render a past member liable, there need not be existing shares; and it makes no difference whether shares have been forfeited, cancelled, or transferred, within the year, or transferred within the year and subsequently forfeited by the transferee (*f*); nor whether, by the articles, the forfeiture has the effect of absolutely extinguishing the shares or not (*g*).

Where a company has been in course of **voluntary winding-up**, and a **compulsory order** is afterwards made, the words “the commencement of the winding-up,” in sub-s. 1 of s. 38 of the Act of 1862, refer to the presentation of the winding-up petition, and not the passing of the resolution for voluntary winding-up; and, therefore, persons who have ceased to be members for more than a year prior to the petition, but not a year prior to the resolution, are not liable to contribute to the assets of the company (*h*).

(2.) No past member is liable to contribute in respect of any debt or liability of the company contracted after the

(*a*) *Ib*.

(*b*) See *ante*, p. 128, *et seq*.

(*c*) *Wright's Case*, 12 Eq. 331.

(*d*) *Ramsay's Case, Re European Ass. Soc.*, 3 Ch. D. 388.

(*e*) S. 38 (1). See the remarks of Jessel, M.R., on s. 38, in *Whitehouse & Co.*, 9 Ch. D. 595, 599; and

see *Taurine Co.*, 25 Ch. D. 118, *dissentiente Cotton*, L.J.

(*f*) *Bridger and Neill's Cases*, 4 Ch. 266; *Creyke's Case*, 5 Ch. 63; *Marshall v. Glamorgan Co.*, 7 Eq. 129; *Taurine Co.*, *supra*.

(*g*) *Creyke's Case*, 5 Ch. 63.

(*h*) *Taurine Co.*, *supra*.

time at which he ceased to be a member (a). As regards this limitation, it may be taken as an established rule that the liability of the B contributories is confined to the *residuum* of the debts contracted before they ceased to be members, after deducting the amount paid in discharge of those debts by the A contributories, whose contributions as part of the assets of the company are, subject to the question of costs, to be applied *pari passu* in discharge of all the company's debts, irrespective of the time at which such debts were contracted (b).

The first part of s. 38 makes past members liable for costs, and the 2nd and 3rd sub-sections do not appear to affect this liability. It seems from the authorities that the following is the rule as to the liability of B contributories to contribute to the costs of the winding-up. Their liability is limited to such costs and adjustment moneys (if any) as may be properly incident to or consequent upon calling on them for contributions in respect of the debts above mentioned (c). If there are no debts in respect of which they can be made liable, then they are not liable for any costs at all. Where there are any such debts, this may perhaps involve some costs in settling the list of past members, and of adjustment of their rights *inter se*, in respect of which past members may be called upon for further contributions; but this is no ground for including in the measure of their total liability any costs to which they are not justly liable to contribute, or any sums necessary for the adjustment only of the rights of present members (d).

Although a contributory be discharged from all liability to call upon his shares, he may, from the particular circumstances of the case, be retained on the register in respect of his liability to costs of winding-up (e).

The provisions of the Act are very imperfect, and at present there are no decisions with respect to companies

(a) S. 38 (2). As to irregular retirement and the effect of lapse of time, see *Murray v. Bush*, L. R. 6 H. L. 37; *Taurine Co.*, 25 Ch. D. 118.

(b) See and consider the following cases: *Brett and Morris's Case*, 7 Ch. 200; *ib.* 8 Ch. 800; *Webb v. Whiffin*, L. R. 5 H. L. 711, 728. See, however, *Accidental and Marine Ins. Corp.*, 5 Ch. 428, affirmed *sub nom.* *Webb v. Whiffin*, *supra*.

(c) See *per* Lord Selborne, in E.W.

Brett's Case, 6 Ch. 800; *ib.* 8 Ch. 800; *Marsh's Case*, 13 Eq. 388; *Webb v. Whiffin*, *supra*; *Burgess' Case*, 15 Ch. D. 507. As to the payment of the costs, &c., of the winding-up, see *post*, p. 248; and s. 110, as regards a winding-up by the Court, and s. 144, as to a voluntary winding-up.

(d) *Ib.*, *Clarke's Case*, 15 Sol. J. (Alb. Arb.) 554; *Michael Brown's Case*, 17 Sol. J. 310.

(e) *Davies's Case*, 17 Sol. J. 670.

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registered, but not formed under the Act (*a*), and as regards **unregistered companies** (*b*).

In the case of companies registered under the Act of 1862, but not formed under it, liability as a past member may arise under three classes, viz.:—(1), where a person ceased to be a member before registration; (2), where he ceased to be so afterwards, but more than a year before the commencement of the winding-up; (3), and where he ceased to be a member after registration, and less than a year before such commencement (*c*).

(3.) No past member is liable to contribute to the assets of the company unless it appears to the Court that the **existing members are unable to satisfy the contributions** required to be made by them (*d*). The B list, *i.e.* the list of past members, is not settled until it is shewn that the present members are unable to satisfy the debts of the company (*e*).

(4.) In the case of a company limited by shares, no contribution can be required from any member exceeding the **amount, if any, remaining unpaid on his shares**, in respect of which he is liable as a past member (*f*).

Past and present holders of the same shares do not stand to one another in the relation of principal and surety; their relation is one of primary and secondary liability; and the liability of a past member is not discharged, at any rate as regards creditors, by a compromise made by the liquidators with the present members under s. 160, even where there is no reservation of rights as against any other contributories (*g*).

The discharge of a contributory in Class A, under s. 160, does not release him from his implied contract to indemnify the transferor, who has been placed as a contributory in Class B, the company having been wound up within twelve months after the transfer (*h*).

Where a shareholder in a company **transferred shares to**

(*a*) SS. 196 (5), 197.

(*b*) S. 200.

(*c*) See Lindley (5th ed.), p. 819.

(*d*) S. 38 (3). As to an insurance company, see *Bath's Case*, 11 Ch. D. 386; *Hesketh's Case*, 13 Ch. D. 693.

(*e*) *Wright's Case*, 12 Eq. 334, n; 335, n.; *McEwen's Case*, 6 Ch. 582; *Needham's Case*, 4 Eq. 135. But see *Andrews' Case*, 3 Ch. 161. See also *Helbert v. Banner*, L. R. 5 H. L. 28.

(*f*) S. 38 (4). As to company limited by guarantee, see s. 38 (5); to be read in connection with ss. 90, 124.

(*g*) *Helbert v. Banner*, L. R. 5 H. L. 28; *Roberts v. Crowe*, L. R. 7 C. P. 629; *Hudson's Case*, 12 Eq. 1; *Nevill's Case*, 6 Ch. 43. As to the transferor's right to indemnity, see *Kellock v. Enthoven*, L. R. 9 Q. B. 241.

(*h*) *Roberts v. Crowe*, *supra*; *Kellock v. Enthoven*, *supra*.

an infant, who transferred them to another infant, who transferred them to an adult, and all the transfers were registered, and the company was ordered to be wound up more than a year after the first transfer, but less than a year after the last transfer, it was held that after the company had once obtained an adult shareholder, the intermediate transfers could not be avoided, that the shareholder ceased to be such at the date of the first transfer, and that he could not be put on the list of past members (*a*).

(5.) The funds contributed by the **B list of shareholders** become **part of the general assets** of the company for payment of all the debts of the company, and are not to be applied, preferentially or exclusively, to the payment of those debts which were incurred before the B shareholders retired from the company (*b*). In other words, there is no division of creditors into classes with different rights against different funds, and consequently no marshalling between them.

(6.) When debts, contracted before the time at which B contributories ceased to be members, in respect of which they were liable, are **released or extinguished** before payment of a call, their liability will be so far determined, subject to any question with respect to the costs of the winding-up (*c*).

Representative contributories.—(1.) If a contributory dies, his liabilities survive to his **executors** and administrators, heirs, and devisees (*d*). And in settling the list of contributories, persons who are contributories in their own right must be distinguished from those who are contributories as representatives of, or being liable to the debts of, others (*e*).

Calls made in the lifetime of a deceased shareholder, and also calls made after his death, although for obligations incurred after that time, must be paid out of his estate, so long as the shares remain in his name (*f*).

On default in payment of calls, the **liquidator is entitled**

(*a*) *Contract Corp., Gooch's Case*, 8 Ch. 266.

(*b*) *Webb v. Whiffin*, 5 Ch. 428; *ib.* 5 H. L. 711.

(*c*) *Brett's Case*, 6 Ch. 800; *ib.* 8 Ch. 800; *Marsh's Case*, 13 Eq. 388. But see the remarks of Lord Chelmsford and Lord Cairns in *Webb v. Whiffin*, *supra*.

(*d*) *Turquand v. Kirby*, 4 Eq. 123; *Heward v. Wheatley*, 3 De

G. M. & G. 628; *Buchan's Case*, 4 App. Cas. 549; *Hamer's Devisees' Case*, 2 D. G. M. & G. 366; *Keen's Executors' Case*, 3 De G. M. & G. 272.

(*e*) SS. 76, 99, 105. See now C. W. U. R. 1890, r. 83, *post*, p. 349.

(*f*) *Baird's Case*, 5 Ch. 725, and the cases there cited; and see *post*, Chapter IX., p. 188.

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to institute an action for the administration of the estate of a deceased shareholder (*a*), and to prove against the estate for all calls made and to be made, and he is further entitle to have a fund set apart to meet such claim (*b*). And letters of administration may, if necessary, be taken out by the liquidator when the company is being wound up by the Court (*c*).

But a balance order under r. 35 of the General Order of 1862, made against the representatives of a contributory for payment of the amount due from the deceased in respect of a call, does not operate as a judgment against the estate of the deceased so as to confer the right to payment in priority to other creditors of the deceased in a due course of administration. Such an order cannot be enforced by *fi. fa.*, or in any way except by taking proceedings to administer the estate of the deceased contributory. By obtaining such an order, therefore, the liquidator does not obtain priority over the right of retainer of an executor (*d*).

An executor whose testator has held shares in a company has generally one of two courses open to him. He may accept the testator's shares in his personal capacity, and have them transferred into his own name, when he will become personally liable (*e*). On the other hand, by s. 24 of the Act, an executor or administrator may transfer the deceased's shares, without being himself a member of a company, and he will not then be liable personally. And he ought to have a reasonable time allowed him to sell the shares, and to produce a purchaser who will take a transfer of them (*f*). The fact that an executor has received the dividends until shares are sold is not

(*a*) S. 105 of 1862 Act. See cases in note (*b*).

(*b*) *Re Muggeridge*, 10 Eq. 443; *Turquand v. Kirby*, 4 Eq. 123; *Price v. Mayo*, 22 W. R. 401; *Tomlinson v. Gilby*, 54 L. J. P. 80. As to liability being a debt of specialty, see *Buck v. Robson*, 10 Eq. 629. See ss. (7) 76, 95, 105.

(*c*) S. 95 of 1862 Act. See cases in note (*b*).

(*d*) *International Marine Hydrographic Co. v. Hawes*, 29 Ch. D. 934.

(*e*) *Alexander's Case* (Alb. Arb.), 15 Sol. J. 788; *Cheshire Banking Co., Duff's Executors' Case*, 32 Ch. D. 301. But see *Ex p. Doyle*, 2 H.

& T. 221. As to accepting new shares, see *Spence's Case*, 17 Beav. 203; *Dobson's Case*, 1 Ch. 231; *Jackson v. Turquand*, L. R. 4 H. L. 305.

(*f*) *Per* Lord Cairns, in *City of Glasgow Bank, Buchan's Case*, 4 App. Cas. 549. But see the remarks of Lord Selborne in the same case. As to what constitutes an acceptance of shares by executors, see *Crosfield's Case*, 2 De G. M. & G. 128; *Ex p. Hall*, 1 Mac. & G. 307; *Ex p. Gouthwaite*, 3 Mac. & G. 187; *Ex p. Armstrong*, 1 De G. & S. 565; *Ex p. Bulmer*, 33 L. J. Ch. 609.

alone sufficient to make him personally liable for such shares (*a*).

There must be a distinct and intelligent request on the part of an executor before a transfer of shares can be made into his name, so as to fix him with personal liability (*b*). It follows that, after such a request, he may be made personally liable (*c*). If an executor purchases further shares after the testator's death, he will be made a contributory without qualification as to such shares (*d*).

But executors who distribute their testator's estate, without providing for a contingent liability in respect of shares held by him, may render themselves personally liable to calls (*e*). Furthermore, executors may be put on the list of contributories, even though they have distributed the assets under Sir G. Turner's Act (now repealed) (*f*), or under Lord St. Leonard's Act (*g*), and were not aware that the testator was a shareholder (*h*). This, however, may not be so if the estate of the deceased shareholder is wound up on the faith of statements made by the company as to the number of shares held, or otherwise, by the deceased (*i*).

An executor who is also a legatee will, if he has not been accepted by the company as a shareholder in respect of the shares in question, be a contributory only as executor (*k*). If a legatee has accepted a bequest of shares, which has been assented to by the executor, and the company has accepted the legatee as a shareholder, the legatee will be the contributory in respect of such shares; but if the legatee has not been accepted by the company, the executor will still be a contributory, as executor only (*l*).

(*a*) *Ex p. Bulmer*, 33 L. J. Ch. 609; *Ex p. Armstrong*, 1 D. G. & S. 565.

(*b*) *City of Glasgow Bank, Buchanan's Case*, 4 A. C. 549.

(*c*) *Cheshire Banking Co., Duff's Executors' Case*, 32 Ch. D. 301; 54 L. T. 558; *Spence's Case*, 17 Beav. 203; *Armstrong v. Burnett*, 20 Beav. 424; *Fenwick's Case*, 1 De G. & S. 557.

(*d*) *Spence's Case*, 17 Beav. 203.

(*e*) *Taylor v. Taylor*, 10 Eq. 477; *Armstrong's Case*, 1 De G. & S. 565. As to the executor's right to indemnity, see *Jervis v. Wolfer-*

stan, 18 Eq. 18.

(*f*) 13 & 14 Vict. c. 35. See *Cole's Executors' Case* (Alb. Arb.), 15 Sol. J. 711; *Markwell's Case*, W. N. 1872, p. 210.

(*g*) 22 & 23 Vict. c. 35. See *Russell's Executors' Case*, 15 Sol. J. 790.

(*h*) A note will, however, be added to their names, mentioning that they have distributed under either Act.

(*i*) *Meux's Executors' Case*, 2 De G. M. & G. 522; 4 De G. & S. 331.

(*k*) *Ex p. Bulmer*, *supra*.

(*l*) See *Crosfield's Case*, *supra*;

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It is not necessary to shew that the personal estate has been exhausted in order to put a devisee on the list of contributories (a).

(2.) SS. 75 and 77 provide for the bankruptcy of a contributory. The trustee in bankruptcy represents a contributory who becomes bankrupt, and is deemed (b) to be the contributory, as all the interest passes to him (c). The liability in respect of calls will be referred to hereafter, when dealing with that subject (d); but such a liability of a liquidating member of a company, where the liquidation proceedings commence prior to the winding-up of the company, and are pending at the time of the winding-up, is a debt or liability which is not "incapable of being fairly estimated," and which is consequently provable in the liquidation. Where, therefore, under those circumstances, a company winding-up has failed to carry a proof in the liquidation proceedings of a member of the company for calls, and the liquidating member obtains his discharge, he cannot afterwards be placed on the list of contributories (e). A bankrupt shareholder in a winding-up under the Act of 1862, who has obtained his discharge, is not a contributory either as a present or a past member (f).

An order for payment will not be made upon a bankrupt contributory when the call is provable, even although the shares may be standing in the name of the bankrupt; and such call must be proved in bankruptcy (g).

A trustee in bankruptcy can disclaim any unmarketable shares belonging to the bankrupt, and the disclaimer operates to determine, as from the date of disclaimer, the rights, interests, and liabilities of the bankrupt in or in respect of the shares disclaimed, and also discharges the trustee from all personal liability in respect of the shares disclaimed as from the date when they vested in him, but

Keen's Executors' Case, 3 De G. M. & G. 272; *Hanner's Devises' Case*, 2 De G. M. & G. 366.

(a) SS. 76, 99.

(b) Only in his character of trustee; as to "deemed to be," see *Stone's Case*, 3 De G. & S. 220.

(c) See *Cape Breton Co.*, 19 Ch. D. 77; *Ex p. Hatcher*, 12 Ch. D. 284. As to the right of a shareholder's trustee in bankruptcy to be placed on the register, where there has been a mortgage of the shares, see *Cannock, &c., Colliery Co.*, *Ex p. Harrison*, 28 Ch. D. 363. As to acting afterwards as

a member, see *Hastie's Case*, 4 Ch. 274. As to power to liquidator to prove, &c., in bankruptcy, see s. 95.

(d) *Post*, p. 186.

(e) *Mercantile Mutual Marine Ins. Ass.*, 25 Ch. D. 415, in which *Furdoonjee's Case*, 3 Ch. D. 264, was not followed. See now s. 37, B. A. 1883, 46 & 47 Vict. c. 52.

(f) *Ex p. Marshall*, 7 Ch. 324; *McEwen's Case*, 6 Ch. 582; *Ex p. Budden and Roberts*, *infra*.

(g) *Mitchell's Case, Re Bank of Hindustan, &c.*, 5 Ch. 400.

does not, except so far as is necessary for the purpose of releasing the bankrupt and his property, and the trustee from liability, affect the rights or liabilities of any other person (a). No disclaimer will be allowed after twelve months from the first appointment of a trustee, unless in cases where the shares have not come to the knowledge of the trustee within one month after such appointment, in which case he is to be allowed to disclaim at any time within twelve months after he first became aware of their existence (b). The company will be deemed to be a creditor of the bankrupt to the extent of the injury, and the liquidator may accordingly prove the same as a debt under the bankruptcy (b).

(3.) Before the Married Women's Property Act, 1882, neither a married woman nor her husband was a contributory, if a company dealt with her as a principal, and she being known to the company to be a married woman, was allowed to become a shareholder in her own right; and if the husband was not, by the regulations of the company, a shareholder in respect of such shares, and she had no separate estate (c). Where the company had accepted the wife as a shareholder without any misrepresentation or concealment on the part of the husband, although the husband took all the steps on the application for, and on transfers of, the shares without the wife's knowledge, the liquidator's application to put the husband on the list of contributories was refused (d).

If a female shareholder marries, her husband is, by the Act, to be treated, in the event of a winding-up, as a contributory himself from the date of the marriage, and not merely as the husband of a contributory, and his liability was not affected by the Married Women's Property Act, 1874 (e). The wife is also, by virtue of the Married Women's

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(a) 46 & 47 Vict. c. 52, s. 55. This applies whether the bankruptcy occurs before or after the winding-up. See under Act of 1869, *Ex p. Budden and Roberts*, 12 Ch. D. 288, 290; *Hardy v. Fothergill*, 13 App. Cas. 351. As to not putting bankrupt or trustee on list after disclaimer, decided under the Bankruptcy Act of 1869, see *Levi v. Ayers*, 3 App. Cas. 842; *Cape Breton Co.*, 19 Ch. D. 77. As to the bankrupt's liability for costs of winding-up, see *Eur. Arb.*, *Davies' Case*, L. T. 80. A dis-

claimer in writing, signed by the trustee's solicitor, is not a valid disclaimer, *Wilson v. Wallani*, 5 Ex. D. 155.

(b) 46 & 47 Vict. c. 52, s. 55, as amended by 53 & 54 Vict. c. 71, s. 13.

(c) See Lindley (5th ed.), 807; *Angas's Case*, 1 De G. & S. 560.

(d) *London, Bombay, &c., Bank*, 18 Ch. D. 581. See also *Fire Re-Insurance Corp.*, W. N. 1883, p. 94.

(e) See ss. 75 and 78; *Ex p. Hatcher*, 12 Ch. D. 284. See ss. 6, 7, and 17, of the Married

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Property Act, 1882, liable to the extent of any separate estate; and if she survives her husband, she then will be liable for the shares (*a*). The wife and husband should therefore be both on the list.

An application for shares in the name of a married woman without stating her condition, is similar to an application in the name of a fictitious person, and the name of the person applying will be substituted in the list of contributories (*b*).

Where a married woman, having separate estate, contracts to take shares in her own name, such contract will be deemed to be entered into upon the credit of her separate estate, and she will be put on the list of contributories in her own right, so as to bind her separate estate (*c*).

When shares are placed in the name of a married woman after the **Married Women's Property Act, 1882** (*d*), the following provisions of that Act will now apply:—

By s. 6, all shares, stock, debentures, debenture-stock, or other interests of or in any company, or of or in any industrial, provident, friendly, benefit, building, or loan society, which at the commencement of the Act are standing in the name of a married woman are deemed, unless and until the contrary be shewn, to be the separate property of such married woman.

By s. 7, all shares, stock, debentures, debenture-stock, and other interests of or in any such company, or society, which after the commencement of the Act shall be allotted to or transferred in or into the sole name of any married woman are deemed, unless the contrary be shewn, to be her separate property, in respect of which her separate estate shall alone be liable.

Unless the wife held the shares previous to her marriage, the husband should not now be put on the list in respect of shares standing in her sole name.

By s. 13, a woman after her marriage continues to be liable in respect and to the extent of her separate property

Women's Property Act, 1882. But consider the wording of s. 78 of the Act of 1862, which refers only to a *contributory* marrying. As to a company registered under Part VII., see s. 196 (5). As to unregistered companies, see s. 200.

(*a*) 45 & 46 Vict. c. 75, s. 13.

(*b*) *Hercules Insurance Co., Pugh and Sharnan's Case*, 13 Eq. 566. But see *Coventry's Case* [1891],

1 Ch. 202.

(*c*) *Leeds Banking Company, Mrs. Matthewman's Case*, 3 Eq. 781. As to necessity of placing both husband and wife on the list, see *City of Glasgow Bank, Bell, Lang's Case*, 4 App. Cas. 547.

(*d*) 45 & 46 Vict. c. 75. As to the summary procedure under that Act, see s. 17.

for all debts contracted, and all contracts entered into by her before her marriage, including any sums for which she may be liable as a contributory, either before or after she has been placed on the list of contributories, under the Companies Acts.

By s. 14, a husband is liable for the debts of his wife contracted, and for all contracts entered into by her before marriage, including any liabilities to which she may be so subject under the Companies Acts, to the extent of all property belonging to his wife which he shall have acquired or become entitled to from or through his wife.

It seems to follow, as the result of the above sections, that a married woman can be made liable as a contributory in respect of shares in her name at the commencement of the Act, but that the same liability falls upon the husband as before the Act. Where the shares are registered in her name after the Act, she alone will be liable in respect of her separate estate; and if she has no such estate beyond the shares, and the company is insolvent, there may be no one liable to contribute. The above sections also regulate the liability of a person marrying a shareholder after the Act.

(4.) Companies holding shares in other companies may be made contributories, if the holding of such shares is not *ultra vires* (a).

Mortgages.—See the summary of cases, *post*.

Trustees.—A trust cannot be recorded on the register of a company registered in England or Ireland under the Act (b). If, therefore, persons consent to have shares registered in their names as trustees, they will be liable, as against the company and creditors, in respect of those shares (c) without any limit as to the amount of the trust estate (d). They are, of course, entitled to indemnity from their *cestui que trust* (e); but not for damage which

(a) See *British Nation Ass.*, 8 Ch. D. 679, and cases there cited.

(b) S. 30. As to Scotch companies, see *Lumsden v. Buchanan*, 4 Macq. 950; *Muir v. City of Glasgow Bank*, 4 App. Cas. 337; *Cree v. Somervail*, *ib.* 648.

(c) *Leifchild's Case*, 1 Eq. 231; *Chapman and Barker's Case*, 3 Eq. 361. See also *Bugg's Case*, 2 Dr. & S. 452; *Bunn's Case*, 2 De G. F. & J. 275; *Barrett's Case*, 4 De

G. J. & S. 416; *Davidson's Case*, 3 De G. & S. 21; *Hemming v. Maddick*, 7 Ch. 395. As to holding a qualification for a director, see *Pulbrook v. Richmond Co.*, 9 Ch. D. 610.

(d) *Muir v. City of Glasgow Bank*, 4 App. Cas. 337. See also *Hoare's Case*, 2 J. & H. 229.

(e) *Chapman and Barker's Case*, *supra*; *Hemming v. Maddick*, *supra*; *Butler v. Cumpston*, 7 Eq.

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they have not yet sustained (*a*). It is frequently arranged that this indemnity should be enforced by the liquidator in the name of the trustee (*b*).

If a trustee agrees with the company that he shall not be put on the register except by his own direction, he cannot be registered by the liquidator after the commencement of the winding-up and made a contributory (*c*).

Where there are several trustees, each is liable for the total amount of which they are joint holders, and not for his proportion only (*d*).

If the transfer to or placing of shares in the name of a trustee is merely colourable or fraudulent, the real owner will be liable (*e*).

The liability of a trustee who is a shareholder does not cease upon his resignation, but he must also transfer his shares, or take such other steps as may be necessary to terminate such liability (*f*).

It seems that a married woman and her husband should be put on the list where the married woman is a trustee (*g*).

Infants.—There are no decisions in which an infant has been put on the list; but if there are surplus assets, and it would consequently be for his benefit, there seems to be no ground for holding that he should not. An infant who applies for shares, and while still under age repudiates the contract, can recover the allotment money paid by him (*h*). A transfer of shares before a resolution to wind up, made to an infant who does not attain twenty-one till after the

16; *James v. May*, L. R. 6 H. L. 328; *Cruse v. Paine*, 4 Ch. 441, and see cases, note (*c*), p. 153. As to whether the company is entitled to enforce the indemnity, see *National Financial Co.*, 3 Ch. 791; *British Nation Ass.*, 8 Ch. D. 679, 708; *Gillespie v. City of Glasgow Bank*, 4 App. Cas. 632. As to indemnity as against creditors, see *Munster Bank*, 17 L. R. Ir. 341.

(*a*) But see *Hughes-Hallett v. Indian Mammoth Mines*, 22 Ch. D. 561. And see *Hobbs v. Wayet*, 36 Ch. D. 256.

(*b*) See *Massey v. Allen*, 9 Ch. D. 164; *James v. May*, L. R. 6 H. L. 328; *Re National Financial Co.*, *Ex p. Oriental Commercial Bank*, 3 Ch. 791.

(*c*) *Gray's Case*, 1 Ch. D. 664.

(*d*) *Cunninghame v. City of*

Glasgow Bank, 4 App. Cas. 607; *Gillespie's Case*, *ib.* 632.

(*e*) Consider the following cases: *King's Case*, 6 Ch. 196; *Hercules Insce. Co.*, *Pugh and Sharman's Case*, 13 Eq. 566; *Imperial Mercantile Credit Ass.*, *Richardson's Case*, 19 Eq. 588; *Humber Iron-works Co.*, *Williams's Case*, 1 Ch. D. 576; *Cox's Case*, 4 De G. J. & S. 53. See also *London, Bombay, &c., Bank*, 18 Ch. D. 581.

(*f*) *Alexander Mitchell's Case*, and *Rutherford's Case*, 4 App. Cas. 548. *Buchan's Case* and *Ker's Case*, *ib.* 549.

(*g*) *Bell, Lang's Case*, 4 App. Cas. 547.

(*h*) *Hamilton v. Vaughan-Sherrin Electrical, &c., Co.* [1894], 3 Ch. 589.

resolution, is void, though the infant, after attaining twenty-one, expresses a desire to retain the shares (a). See the summary of leading cases, *infra*, as to infants.

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Nature of liability.—The liability to pay calls commences at the date when the contributory entered into the contract under which he became a member (b). This liability to contribute to the assets in a winding-up creates a specialty debt, and the call is merely a mode of declaring when the debt so created becomes payable (c); and although the call is “payable” on a future day, it is owing from the day on which it is made (d).

The liability of contributories may, by the express terms of the articles of association of a limited company, extend to a greater amount in respect of certain debts than the amount of their fully paid-up shares if the company is wound up (e).

As the call constitutes a debt due at the commencement of the winding-up, a shareholder, after that time, can only assign a debt due to him from the company subject to a right of **set-off** by the company of all calls made subsequently to the assignment, and previous to the payment of the debt (f).

Where shares were registered in the joint names of two persons, one of whom was since dead, the articles of association being silent as to the liability thereby incurred, it was held, under the Joint Stock Companies Act, 1856, that a joint liability only was contracted, and that it survived on the death of the joint owner, and the survivor was, therefore, alone liable to be placed on the list of contributories (g).

S. 75 applies also to the liability of a shareholder in the case of an **unregistered company** wound up under the Act (h).

(a) *Continental Bank Corporation*, 8 Eq. 504; *Symon's Case*, 5 Ch. 298.

(b) *Ex p. Canwell*, 4 De G. J. & S. 539; *Ex p. Mackenzie*, 7 Eq. 240; *Williams v. Harding*, L. R. 1 H. L. 9; *Faure Electric Accumulator Co. v. Phillipart*, 58 L. T. 525.

(c) S. 75. See *Williams v. Harding*, L. R. 1 H. L. 9; *Buck v. Robson*, 10 Eq. 629; *Whitehouse & Co.*, 9 Ch. D. 595; *Ex p. Hatcher*, 12 Ch. D. 284. See now 32 & 33 Vict. c. 46.

(d) *China Steamship Co., Dawes' Case*, 38 L. J. Ch. 512. (1869)

(e) *Maxwell's Case*, 20 Eq. 585; *McKewan's Case*, 6 Ch. D. 447; *Lion Ins. Assoc. v. Tucker*, 12 Q. B. D. 176.

(f) *China Steamship Co., Ex p. Mackenzie*, 7 Eq. 240; *Ex p. Canwell*, *supra*; *Williams v. Harding*, *supra*. But see *Ex p. James*, 8 Eq. 225. As to set-off, see *Griswell's Case*, 1 Ch. 528.

(g) *Maxwell's Case*, 20 Eq. 585.

(h) *Re Muggeridge*, 10 Eq. 443.

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As to proving against a deceased contributory's estate for all calls made or to be made, see case below (a).

As to companies limited by guarantee, see s. 90.

Adjustment amongst themselves.—By s. 38 (7) no sum due to any member of a company in his character of a member, by way of dividends, profits, or otherwise, is to be deemed to be a debt of the company, payable to such member in a case of competition between himself and any other creditor not being a member of the company; but any such sum may be taken into account, for the purposes of the final adjustment of the rights of the contributories amongst themselves. By s. 109 the Court is to adjust the rights of the contributories amongst themselves, and distribute any surplus that may remain amongst the parties entitled thereto (b).

And by s. 102 power is given to make calls for the above purpose. Such calls must be made where some of the shares have been issued at a discount (c).

Cases of misrepresentation, and of agreements between the members themselves, must receive due consideration in deciding who are to be contributories to assets of a company for the adjustment of the rights of contributories amongst themselves (d). And shareholders who have paid more on their shares than their co-members, will, of course, have the right to be put on an equality with them (e), unless the right is excluded by the articles, when no call for equalization could be made (f). A provision in the articles of association that calls shall not be made without the consent of three-fourths of the shareholders, can only operate as a limitation of the powers of the directors while the company exists, but not when it is in

See s. 199. As to a cost-book company, and liquidator, omitting arrears of calls owing from insolvent shareholders in estimating assets, see *Frank Mills Mining Co.*, 23 Ch. D. 52.

(a) *Re Muggeridge*, *supra*, at p. 360.

(b) See *Birch v. Cropper*, 14 A. C. 515, and *Re Bridgewater Navigation Co.* [1891], 2 Ch. 317, as to reserve funds and surplus assets generally.

(c) See *ante*, p. 131.

(d) SS. 38, 109. *Maxwell's Case*, 20 Eq. 585; *McKewan's*

Case, 6 Ch. D. 447; *Lion Ins. Assoc. v. Tucker*, *supra*. See *Ex p. Maude*, 6 Ch. 51; *ib.* 53, n.; *Eclipse Gold Mining Co.*, 17 Eq. 490.

(e) *Anglesea Colliery Co.*, 1 Ch. 555. See *Exchange Drapery Co.*, cited *ante*, p. 92. See *Provision Merchants' Co.*, 6 L.T. 862; *Crookhaven Mining Co.*, 3 Eq. 69. See *Bangor Slate Co.*, 20 Eq. 59; *Scinde, Punjab, &c., Corp.*, 6 Ch. 53, n.

(f) *Doncaster Building Soc.*, 4 Eq. 579.

liquidation, and the rights of contributories are to be adjusted (a).

A person can prove for damages in respect to an irregularity in forfeiture of shares in competition with the other creditors, and sub-s. 7 of s. 38 does not apply (b).

The Court has only jurisdiction to adjust the rights of contributories *inter se* in that character, and it cannot enforce other equities merely because the persons who claim them happen to be contributories (c).

Under the jurisdiction to adjust the rights of the contributories amongst themselves given by s. 109, the Court will not under the winding-up enforce an alleged contract by the promoters to indemnify persons signing the subscription contract against all liability in respect of the shares, by directing a call payable primarily by the promoters only (d).

Companies registered but not formed under Acts.—In the case of a company registered but not formed under the Acts being wound up, the contributories, in respect of debts and liabilities contracted prior to registration, are such persons who, if the company had not been registered, would have been liable at law or in equity to pay or contribute to the payment of any debt or liability of the company contracted prior to registration, or to the payment of any sum for the adjustment of the rights of members amongst themselves in respect of any such debt or liability; or to the payment of the costs, charges, and expenses of winding up the company, so far as relates to such debts or liabilities (e). The provisions as to representative contributories, which have been already pointed out, apply to these companies (f). With respect to debts and liabilities contracted subsequent to registration, the contributories are, of course, the same persons as would have been contributories if the company had been formed as well as registered under the present Act, or the Acts of 1856–7.

The effect of the Act is to put a company compulsorily registering itself under s. 209 in the same position as if

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(a) *Coed Madog Slate Co.*, W. N. 1877, p. 190. See *Provision Merchants' Co.*, *supra*.

(b) *New Chile Gold Mining Co.*, 45 Ch. D. 598.

(c) *Ex p. Goodson, Re Alexandra Palace Co.*, 23 Ch. D. 297.

(d) *Addison's Case*, 20 Eq. 620.

See *National Savings Bank Ass.*, 1 Ch. 547.

(e) S. 196 (5). As to the death of contributories, bankruptcy, or marriage, see *ante*, pp. 147–153. There is no provision as in s. 38 (1), as to past members.

(f) *Ib.* See *ante*, p. 147.

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the registration had been voluntary, and the 38th section applied to such a company (a).

Unregistered companies.—In the case of an unregistered company being wound up, every person is deemed to be a contributory who is liable to contribute to the payment of any debt or liability of the company, or to the payment of any sum for the adjustment of the rights of the members amongst themselves (but not a mere debtor to the company (b)), or to the payment of the costs, charges, and expenses of winding-up (c). The foregoing provisions as to representative contributories also apply to these companies. In order to ascertain the persons who are comprised in this class, the nature of the particular company must necessarily be looked to. Promoters, who had obtained subscriptions by misrepresenting the amount of capital subscribed, were held to be contributories for the balance of the capital not subscribed (d). If shares have been transferred to nominees merely in order to make the number of shareholders appear larger, the original shareholder may be put on the list (e); but not in the case of a *bonâ fide* nominee (f).

As to a policy-holder with profits in an assurance company, see the case below (g).

There is nothing in the Act to exempt past members of unregistered companies who have ceased to be members for upwards of a year, and they are liable for debts contracted before they ceased to be members.

Stannaries.—In the Stannaries, a former shareholder is not liable to contribute to the assets of the company if he has ceased to be a shareholder for a period of two years before the date of the winding-up order (h). A shareholder in a cost-book mine, who has ceased to be a shareholder more than two years before the order for winding-up, cannot be put on the list of contributories as a past member,

(a) *European Assurance Society, Ramsey's Case*, 3 Ch. D. 388.

(b) For examples, see *Shields Marine Ins. Ass.*, 5 Eq. 368; *Ex p. Littledale*, 9 Ch. 257; *Ex p. British Nation Ass.*, 8 Ch. D. 679, 708.

(c) S. 200. As to the death of contributories, bankruptcy, or marriage, see *ante*, pp. 147–153. There is no provision as to past members. As to costs of winding-up, see *post*, p. 248.

(d) *Royal Victoria Theatre Syn-*

dicate, Moore and De La Torre's Case, 18 Eq. 661.

(e) *Cox's Case*, 4 De G. J. & S. 53.

(f) *King's Case*, 6 Ch. 196.

(g) *Albion Ass. Soc., Winstone's Case*, 12 Ch. D. 239.

(h) 32 & 33 Vict. c. 19, s. 25. As to the liquidator omitting arrears of calls due from insolvent shareholders in estimating assets, see *Frank Mills Mining Co.*, 23 Ch. D. 52.

although he has not so ceased for two years before the mine ceased to be worked (*a*).

Savings bank.—A trustee or manager of a savings bank cannot be made a contributory in the winding-up of the bank, or be called upon to contribute to the costs, charges, and expenses of the liquidation, by reason of personal liability incurred within the exceptions from the protection conferred by s. 11 of the Trustee Savings Bank Act, 1863, but he may be compelled, under s. 10 of the Companies Act, 1890, to pay an adequate sum by way of compensation towards the assets of the bank (*b*).

Building societies.—In a building society under the Building Societies Act of 1874, the liability of any member in respect of any share upon which no advance has been made, is limited to the amount actually paid or in arrear on such share, and in respect of any share upon which an advance has been made to the amount payable thereon under any mortgage or other security, or under the rules of the society (*c*). On winding-up, an advanced member is not liable to pay the amount of his advance except at the time or times, and subject to the conditions mentioned in the mortgage or rules (*d*).

On a winding-up, past advanced, or past investing members who have satisfied all their obligations to the society in accordance with the rules, are no longer under any liability to contribute to the losses of the society with present members; for the rules of a building society constitute a contract between the society and its members, by which the liability of all classes of members is regulated (*e*).

Every member of an **unincorporated** society is a contributory, with **unlimited liability**.

Industrial and provident societies.—Where an industrial and provident society is wound up, the liability of a present or past member of the society to contribute for payment of the debts and liabilities of the society, the expenses of winding-up, and the adjustment of the rights of contributories amongst themselves, is qualified as follows (*f*):—

(*a*) *Wheal Unity Wood Mining Co., Chynoweth's Case*, 15 Ch. D. 13.

(*b*) *Cardiff Savings Bank, Davies' Case*, 45 Ch. D. 537; *Marquis of Bute's Case* [1892], 2 Ch. 100.

(*c*) 37 & 38 Vict. c. 42, s. 14.

(*d*) Building Societies Act, 1894, s. 10, which applies to all future cases, and also to a society, the

dissolution of which was begun before but not completed on 25th August, 1894. *Kemp v. Wright* [1895], 1 Ch. 121. See same case as to instruments of dissolution before that date.

(*e*) *West Riding of Yorkshire Building Soc.*, 45 Ch. D. 463.

(*f*) Industrial and Provident

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- (a.) No individual, society, or company, who or which has ceased to be a member for one year or upwards prior to the commencement of the winding-up is liable to contribute.
- (b.) No individual, society, or company, is liable to contribute in respect of any debt or liability contracted after he or it ceased to be a member.
- (c.) No individual, society, or company, not a member, is liable to contribute, unless it appears to the Court that the contributions of the existing members are insufficient to satisfy the just demands of the society.
- (d.) No contribution is required from any individual society or company exceeding the amount, if any, unpaid on the shares in respect of which he or it is liable as a past or present member.
- (e.) An individual, society, or company is to be taken to have ceased to be a member, in respect of any withdrawable share withdrawn, from the date of the notice or application for withdrawal.

Policy-holders.—A policy-holder in a proprietary company is simply a contingent creditor; and he is under no liability whatever to other policy-holders or to the company itself, since he need not even continue his premiums.

Participating policy-holders, where they are allowed to share in the profits, are not usually liable as contributories (a).

Where a policy-holder participating in profits has power to vote at meetings, and on winding-up is entitled to the surplus assets after the shareholders have been paid in full, he is not under any undertaking to contribute with the shareholders towards meeting the liabilities of the company (b). Even if a policy-holder might be treated as a partner by an outside creditor, the shareholders cannot make him contribute unless the deed of settlement makes him so liable.

Societies Act, 1893 (56 & 57 Vict. c. 39), s. 60. As to the relation of past and present members and their respective liability, see *ante*, pp. 144–147. As to liability for debts before registration, see *Fountain's Case*, 11 Jur. N. S. 553.

(a) *English and Irish Church, &c., Ass. Soc.*, 1 H. & M. 85; *Coe*

v. Hickman, 8 H. L. C. 268; *Bishop v. Scott*, 7 L. T. 570.

(b) *Strachan's Case*, 16 S. J. (Alb. Arb.); 62 *Hummel's Case*, 16 S. J. 65 (Alb. Arb.). See this last case as to non-liability of participating policy-holders where claims are to be charged on funds of company.

All policy-holders under a mutual society of the older type, such as marine mutual companies, were held bound to contribute (*a*).

Where the articles of association of a life assurance company, formed upon the mutual principle, provided that there should be two classes of members, namely, shareholders so long as there should be any shareholders, and assurance members, defined to mean policy-holders with participation in profits, and registered as members of the company, and when the shareholders should be paid off under the scheme provided for, then the company was to consist of insurance members only, it was held that the policy-holders were contributories, but that they would not be called upon to contribute until the shareholders had been exhausted (*b*).

In certain mutual insurance companies, the assignee of a policy, by payment of premiums, is held to have contracted to become a member of the company, and is liable to be entered on the register as a contributory; but, if the directors refuse to register the assignee as a member of the company, the Court will in certain cases hold him not to have become a contributory (*c*). On the other hand, assignment before the winding-up of such a company relieves the assignor (*d*).

As to **stamp** required to make policy-holders liable as contributories, see the cases cited under "Unregistered Companies," *supra*.

Power of Court to order payment.—The realization of the debts due to a company from any person settled on the list of contributories (*e*) is greatly facilitated by the provisions of s. 101, which enable the Court to make a peremptory order on a contributory to pay at once any moneys due from him. Otherwise the company would be put to the expense of bringing an action. Under s. 101 and s. 10 of the Act of 1890 (*f*), the Court has summary power to order a contributory or director to repay a dividend declared and paid under a delusive and fraudulent balance-sheet (*g*). As to set-off, see Chapter IX.

(*a*) *Reed v. Cole*, 3 Burr. 1513; *Hummel's Case*, *supra*; *Albion Life Ass. Soc.*, 16 Ch. D. 83; *Great Britain Mutual Life Ass. Co.*, 16 Ch. D. 247; *Bath's Case*, 11 Ch. D. 386.

(*b*) *Winstone's Case*, 12 Ch. D. 239.

(*c*) *Albion Life Ass. Soc.*, *Ex p.* E.W.

Sanders, 20 Ch. D. 403.

(*d*) *Albion Life Ass. Soc.*, *Ex p.* *Brown*, 18 Ch. D. 639.

(*e*) See *Marlborough Club Co.*, 5 Eq. 365.

(*f*) Formerly s. 165 of the Act of 1862, now repealed by the above Act.

(*g*) *Stringer's Case*, 4 Ch. 475.

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Absconding contributory.—Where there is clear evidence (a) that there is probable cause for believing that a contributory intends to abscond, or to remove or conceal any of his property, for the purpose of evading payment of calls, or for avoiding examination (b), the Court may, either before or after a winding-up order, cause such contributory to be arrested (c), or (d) his books, money, and goods, &c., to be seized (e). The powers vested in the Court are cumulative (f). Application may be made for a writ of *ne exeat regno* to prevent a contributory from absconding without paying a call made (g); but the alleged contributory must have an opportunity of disputing his liability (h).

See *Feltom's Executors' Case*, 1 Eq. 219; *Cardiff Coal Co. v. Norton*, 2 Ch. 405. See Chap. XII. as to s. 10.

(a) *Imperial Mercantile Credit Co.*, 2 Eq. 264.

(b) See *post*, p. 197, as to examination.

(c) In case of arrest, as to the insufficiency of a mere hearsay statement, see *Imperial Mercantile Credit Co.*, *supra*.

(d) As to the power being in the

alternative, see *Imperial Mercantile Credit Co.*, *supra*.

(e) S. 118. The section does not extend to real estate. For form of order and proceedings in such cases, see *Ulster Land, &c., Investment Co.*, 17 L. R. Ir. 591.

(f) S. 119.

(g) *Mawer's Case*, 4 De G. & S. 349. See Dan. Ch. Pr.

(h) *Cotton Plantation Co. of Natal*, W. N. 1868, p. 79.

SUMMARY OF LEADING CASES.

AGENT.

Liability where shares are taken by.

Agent is liable—

When shares taken in his name and agency is not disclosed.

Bird's Case, 4 De G. J. & S. 200.

When he applies in name of principal without principal's consent, and principal repudiates.

Pugh & Sharman's Case, 13 Eq. 566.

Ex p. White, 16 L. T. 276.

But not if neither company nor agent intended that there should be a contract to take shares.

Re Britannia Fire Ass., Coventry's Case [1891], 1 Ch. 202.

When by mistake he applies

AGENT—continued.

for shares in a company not authorized by principal he is liable in damages.

Ex p. Panmure, in re *National Coffee Palace Co.*, 24 Ch. D. 367.

Principal is liable—

When he authorizes agent to take the shares in his name.

Barrett's Case, 4 De G. J. & S. 416.

When he authorizes agent to sign memorandum of association in his name.

In re Whitby Partners, ex p. *Callan*, 32 Ch. D. 337.

Cf. Jackson v. Napper, 35 Ch. D. 172.

If he adopts an unauthorized application by an agent.

G. H. Levita's Case, 5 Ch. 489.

AGENT—*continued.*

As to revocation of agent's authority, see

Ex p. Burton, 21 L. J. Ch. 781.

Nature of agent's liability when he makes an unauthorized application for shares.

Ex p. Panmure, *supra*.
Coventry's Case, *supra*.

Contract may be made with agent of company.

Licensed Victuallers, &c., Association, 42 Ch. D. 1.

Portuguese Consolidated Copper Mines, 45 Ch. D. 16.

AGREEMENT TO BECOME A MEMBER.

Applicant is not liable unless application is followed by allotment and notice within reasonable time.

Applicant held not liable.

Carmichael's Case, 17 Sim. 163.

Pellatt's Case, 2 Ch. 527.

Gunn's Case, 3 Ch. 40.

Robinson's Case, 4 Ch. 332.

Sahlgreen & Carroll's Case, 3 Ch. 323.

Ex p. Harwood, 20 L. T. 736.

Applicant held liable.

A. Levita's Case, 3 Ch. 36.

Fletcher's Case, 37 L. J. Ch. 49.

Cf. Scottish Petroleum Co., 23 Ch. D. 413.

Cheshire Banking Co., 32 Ch. D. 301.

Unless he has otherwise agreed to take shares.

Adams's Case, 13 Eq. 474.

Harward's Case, 13 Eq. 30.

Sidney's Case, 13 Eq. 228.

But the notice of allotment need not be formal.

Gunn's Case, *supra*.

A. Levita's Case, *supra*.

And may be given to the applicant's authorized agent.

Robinson's Case, *supra*.

Wallis's Case, 5 Ch. 325, *note*.

An agreement to take shares may be verbal.

Goldie v. Torrance, 10 Ct. of Sess. Cas. (Sc.) 174.

Electric Telegraph Co. of Ireland, 26 Beav. 6; 3 De G. & J. 170.

AGREEMENT TO BECOME A MEMBER—*continued.*

Allottee is under no liability if shares were registered in his name without consent or application by him.

Oakes v. Turquand, L. R. 2 H. L. 325, at p. 350.

Chapman & Barker's Case, 3 Eq. 361, at p. 365.

Ship's Case, 2 De G. J. & S. 544.

Scottish Petroleum Co., *supra*.

Goldie v. Torrance, 10 Ct. Sess. Cas. (Sc.) 174.

Rushworth's Case, 66 L. T. 48.

No liability if agreement is cancelled.

Florence Land Co., *Tuffnell & Ponsonby's Case*, 29 Ch. D. 421.

Cf. Adams's Case, 13 Eq. 474.

Even though the memorandum of association may have been signed.

Snell's Case, 5 Ch. 22.

But there must be power of cancellation or allottee will be liable notwithstanding.

Sidney's Case, 13 Eq. 228.

Hall's Case, 5 Ch. 707.

Argyll Coal, &c., Co., 54 L. T. 233.

A director may be liable for shares issued in pursuance of an irregular resolution.

In re Miller's Dale, &c., Co., 31 Ch. D. 211.

Applicant for shares in a false name will be liable.

G. H. Levita's Case, 5 Ch. 489.

Cf. Robinson's Case, 4 Ch. 322.

And an application in name of a person under a disability may make applicant liable.

Pugh & Sharman's Case, 13 Eq. 566.

Reaveley's Case, 1 De. G. & S. 550.

Cf. Coventry's Case [1891], 1 Ch. 202, *supra*, p. 152.

But not if company is aware of disability, and refuse to allow the person under disability to sign.

Maxwell's Case, 24 Beav. 321.

But acquiescence by holder after disability removed may render him liable.

Ebbett's Case, 5 Ch. 302.

Mitchell's Case, 9 Eq. 363.

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Unless the company suffers no loss thereby.

Hart's Case, 6 Eq. 512.

Or knowingly registers the name.
Cf. Mitchell's Case, *supra*.

But the acquiescence must be clear.

Wilson's Case, 8 Eq. 240.

As by dealing with the shares.

Lumsden's Case, 4 Ch. 31.

And especially if shares have been repudiated.

Baker's Case, 7 Ch. 115.

Yeoland Consols (No. 2), 58 L. T. 922.

Executors who apply for shares may be personally liable.

Cheshire Banking Co., Duff's Executors' Case, 33 Ch. D. 301.

An alteration of the articles of association after application not affecting the objects of company will not relieve applicant.

Lyon's Case, 35 Beav. 646.

But alteration of memorandum of association, by increasing value of shares, will not bind applicant without notice.

Gustard's Case, 8 Eq. 438.

Agreement to take shares will not be fulfilled by holding shares in names of others unless there is a bona fide trusteeship.

Cox's Case, 4 De G. J. & S. 53.

King's Case, 6 Ch. 196.

Agreement to take shares held satisfied by allotment to applicant's firm.

Nokes's Case, 16 W. R. 413, 1135.

Dunster's Case [1894], 3 Ch. 473.

As to requirements of agreement to take shares for future allotment and payment, see

Barrett's Case, 2 Dr. & Sm. 415; 3 De G. J. & S. 30.

An agreement may be made to take shares in payment for work done or services rendered.

Sharon's Claim, W. N. 1866, p. 231.

If the provisions of s. 25 of the Companies Act, 1867, are complied with.

AGREEMENT TO BECOME A
MEMBER—continued.

White's Case, 12 Ch. D. 511.

Andress' Case, 8 Ch. D. 126.

Pagin & Gill's Case, 6 Ch. D. 681.

Bush's Case, 9 Ch. D. 554.

Cf. Blyth's Case, 4 Ch. D. 140.

But even with registered contract, shares must be paid for "in meal or malt;" they cannot be issued as bonus shares for an illusory consideration.

Eddystone Marine Insurance Co. [1893], 3 Ch. 9.

Bland's Case [1893], 2 Ch. 612.

Chapman's Case [1895], 1 Ch. 771.

Nor at a discount.

Ooregum Gold Co. v. Roper [1892], A. C. 125, and cases, *ante*, p. 131.

But no liability will attach on winding-up if the contract is only to take fully paid-up shares and the matter rests in contract.

Barangah Oil Refining Co., Arnott's Case, 36 Ch. D. 702.

Macdonald, Sons & Co. [1894], 1 Ch. 89. See *ante*, p. 143.

Or if the company has an option of paying in cash or shares, and is wound up before exercising the option.

Sharon's Claim, *supra*.

If the agreement is not acted upon within a reasonable time, either party may decline to carry it out.

Ex p. London Bank of Scotland, 12 Eq. 268.

Mackenzie's Case (Eur. Arb.), L. T. 141; 18 Sol. J. 223.

Unless applicant has subscribed the memorandum of association.

Levick's Case, 40 L. J. Ch. 180.

Sidney's Case, 13 Eq. 228.

Tooth's Case, W. N. 1868, 270.

ALLOTMENT.

Allotment to bind applicant must be within reasonable time.

Ramsgate Hotel Co. v. Montefiore, and *Same v. Goldsmid*, L. R. 1 Ex. 109.

Borron, Bailey & Co., ex p. Baily, 3 Ch. 592.

ALLOTMENT—continued.

Land Loan, &c., Co. of S. Africa,
W. N. 1885, p. 59.
Carmichael's Case, 17 Sim. 163.

Allotment to an infant imposes no liability on him.

Ex p. Reaveley, 1 De G. & S. 550.

Maxwell's Case, 24 Beav. 321.

Hamilton v. Vaughan Sherrin Electrical, &c., Co. [1894], 3 Ch. 589.

Allotment to a trustee for purposes of fraud will not relieve the real owner.

Cox's Case, 4 De G. J. & S. 53.

Davidson's Case, 3 De G. & S. 21.

Barrett's Case, 4 De G. J. & S. 416.

Allotment to trustee of shares in a scrip company.

Ex p. Finlay, 27 L. J. Ch. 664.

Allotment to executors.

Executors accepting new shares, after their testator's death, are personally liable.

Fearnside & Dean's Case, 1 Ch. 231.

Cheshire Banking Co., 32 Ch. D. 301.

Allotment to some person other than applicant frees him from liability, although notice of allotment is sent to him.

Mallorie's Case, 2 Ch. 181.

Allotment ultra vires of company: allottee not liable where his name was never placed on register.

Barnett's Case, 18 Eq. 507.

Cf. London Celluloid Co., 39 C. D. 190.

Unless he has dealt with shares.

Sandys' Case, 42 C. D. 98.

Arnott's Case, 36 C. D. 702.

Macdonald, Sons & Co. [1894], 1 Ch. 89.

Eddystone Marine Ins. Co. [1893], 3 Ch. 9.

Allotment at a meeting notice of which was not sent to all directors invalid.

Homer District Consolidated Gold Mines, 39 C. D. 546.

British Empire Match Co., ex p. Ross, 59 L. T. 291, 813; *In re Portuguese Consolidated*

ALLOTMENT—continued.

Copper Mines, Ltd., 42 C. D. 160.

But the allotment may be made valid by directors at a subsequent and properly constituted meeting.

Badman & Bosanquet's Case, 45 C. D. 29.

Cf. Bolton Partners v. Lambert, 41 C. D. 295.

Allottee not bound by allotment to him of fewer shares than he applied for.

Roberts's Case, 1 Drew. 204.

Ex p. Barber, 20 L. J. Ch. 146.

Notice of allotment.

Evidence as to.

Reidpath's Case, 11 Eq. 86.

Sparling's Case, 26 W. R. 41.

De Rosaz's Case, 21 L. T. 10.

Imperial Land Co. of Marseilles, Wall's Case, 15 Eq. 18.

Household Fire Ins. Co. v. Grant, 4 Ex. D. 216.

Sufficiency of.

Bloxam's Case, 33 Beav. 529.

Townsend's Case, 13 Eq. 148.

Richards's Case, L. R. 6 C. P. 591.

Howard's Case, 1 Ch. 561.

Harris's Case, 7 Ch. 587.

Land Shipping Colliery Co., 18 L. T. 786.

Ex p. Fox, 8 L. T. 223.

Household Fire Ins. Co. v. Grant, *supra*.

Gunn's Case, 3 Ch. 40.

Notice posted before notice of withdrawal: allottee liable.

Household Fire Ins. Co. v. Grant, *supra*.

Harris's Case, *supra*.

Imperial Land Co. of Marseilles, *supra*.

Taylor v. Jones, 1 C. P. D. 87.

Bennett v. Cosgriff, 38 L. T. 177.

Dispensing with notice where allottee is a director of company.

Adams's Case, 13 Eq. 474.

Great Oceanic Telegraph Co., *Harward's Case*, 13 Eq. 30.

Fowler's Case, 14 Eq. 316; questioned in *Duke's Case*, 1 Ch. D. 620.

Robinson & Preston's Brewery,

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ALLOTMENT—continued.

Sidney's Case, L. R. 13 Eq. 228.

Cf. Ritso's Case, 4 Ch. D. 774.

In other cases.

United Ports, &c., Co., Tucker's Case, 25 L. T. 654.

Valparaiso Waterworks Co., Davies' Case, 26 L. T. 650.

Barrett's Case, 2 Dr. & Sm. 415; 3 De G. J. & S. 30; and see cases under "Memorandum of Association."

Cf. Leeds Banking Co., Addinell's Case, 1 Eq. 225.

Dispensing with notice where applicant is presumed to have known of allotment.

Peruvian Railway Co., Crawley's Case, 4 Ch. 322.

Fletcher's Case, 37 L. J. Ch. 49.

Applicant receiving no notice of allotment held not a contributory.

Ward's Case, 10 Eq. 659.

Hallmark's Case, 9 Ch. D. 329.

Sahlgreen & Carroll's Case, 3 Ch. 323.

Notice of allotment to agent.

Principal held a contributory.

Oriental Commercial Bank, 19 W. R. 844.

G. H. Levita's Case, 5 Ch. 489.

Davies' Case, 41 L. J. Ch. 659.

Principal held not a contributory.

Robinson's Case, 4 Ch. 330.

Peruvian Ry. Co., Wallis's Case, 4 Ch. 325, n.

Cf. Britannia Fire Association, Ltd., ante, p. 152.

Withdrawal by applicant before receipt of notice of allotment—

By writing.

Hebb's Case, 4 Eq. 9.

Pentelow's Case, 4 Ch. 178.

Ritso's Case, 4 Ch. D. 774.

Cf. Scottish Petroleum Co., 23 Ch. D. 413.

Orally.

Natal Investment Co., Wilson's Case, 20 L. T. 962.

Re Brewery Assets Co., Truman's Case [1894], 3 Ch. 272.

ALLOTMENT—continued.

Cf. Dickinson v. Dodds, 2 Ch. D. 463.

When no allotment within reasonable time.

Ramsgate Hotel Co. v. Montefiore, L. R. 1 Ex. 109.

Conditional application.

Applicant held not a contributory.

Sunken Vessels Recovery Co., Wood's Case, 3 De G. & J. 85.

Howard's Case, 1 Ch. 561.

Rolling Stock Co. of Ireland, Shackelford's Case, 1 Ch. 567.

Aldborough Hotel Co., Simpson's Case, 4 Ch. 184.

National Equitable Provident Soc., Wood's Case, 15 Eq. 236.

Universal Banking Corporation, Rogers's Case, 3 Ch. 633.

Empire Assurance Corporation, Dougan's Case, 8 Ch. 540.

Richmond Hill Hotel Co., Pellatt's Case, 2 Ch. 527.

Land Shipping Co., Ex p. Harwood, 20 L. T. 736.

Land and Provincial Provident Assoc., Mogridge's Case, 57 L. J. Ch. 932.

Applicant held to be a contributory.

Miln v. North British Fish Supply Co., 15 C. of S. Cas. 28 (Sc.).

United Ports, &c., Co., Perrett's Case, 15 Eq. 250.

Addison's Case, 5 Ch. 294.

Bridger's Case, 5 Ch. 305.

Southport, &c., Banking Co., Fisher's Case, Sherrington's Case, 31 Ch. D. 120.

Value of shares raised after application, but before allotment.

Applicant only liable for value at time of application.

Gustard's Case, 8 Eq. 438.

Condition inserted by company in allotment relieves allottee from liability in respect of shares allotted.

Oriental Inland Steam Co. v. Briggs, 2 J. & H. 625; 4 De G. F. & J. 191.

Leeds Banking Co., Addinell's Case, 1 Eq. 225.

ALLOTMENT—continued.

- Pentelow's Case*, 4 Ch. 178.
Jackson v. Turquand, L. R. 4
 H. L. 305.
United Ports Co., Beck's Case,
 9 Ch. 392.

Unless the condition is accepted.

- Barrett's Case*, 2 Dr. & Sm.
 415; 3 De G. J. & S. 30.
Cf. Harris's Case, 7 Ch. 587;
 and *Scottish Petroleum Co.*,
 23 Ch. D. 413.

Distinction between condition in allotment and collateral agreement.**Condition precedent not fulfilled : allottee not liable.**

- Richmond Hill Hotel Co.*,
Pellatt's Case, 2 Ch. 527.
Universal Banking Corpora-
tion, Rogers's Case, 3 Ch.
 633.

- Aldborough Hotel Co., Simp-*
son's Case, 4 Ch. 184.

Condition precedent fulfilled : allottee liable.

- Southport, &c., Banking Co.*,
Fisher's Case, 31 Ch. D. 120.
Peruvian Ry. Co., Crawley's
Case, 4 Ch. 322.

Collateral agreements : allottee liable.

- Elkington's Case*, 2 Ch. 511.
Bridger's Case, 5 Ch. 305.
Thompson's Case, 4 De G. J.
 & S. 749.

Agreements ultra vires not binding on allottee or company.

- Coleman's Case*, 1 De G. J. & S.
 495.
Bunn's Case, 2 De G. F. & J. 275.
Mallorie's Case, 2 Ch. 181.
Cf. Nantio's Consols Co.,
Thomas's Case, 13 Eq. 437.

Estoppel of allottee by conduct.

- Empire Assurance Co., Challis's*
Case, 6 Ch. 266.
Peruvian Ry. Co., Crawley's
Case, 4 Ch. 322.
Campbell's Case, 9 Ch. 1.
Southport, &c., Banking Co.,
Fisher's Case, 31 Ch. D. 120.
In re Miller's Dale, &c., Co., 31
 Ch. D. 211, *supra*.

Applicant not liable where no allotment.

- Adelaide Hotel Co., Best's Case*,
 2 De G. J. & S. 650.
Empson's Case, 9 Eq. 597.

ALLOTMENT—continued.**Agreement to take shares : delay, non-liability of applicant.**

- Ex p. London Bank of Scotland*,
 12 Eq. 268.
Florence Land Co., Tuffnell &
Ponsonby's Case, 29 Ch. D.
 421.
Cf. Sidney's Case, 13 Eq. 228.

Person agreeing to place shares not necessarily a contributory.

- Monarch Insurance Co., Gor-*
rissen's Case, 8 Ch. 507.
Cf. Miln v. North British Fish
Supply Co., 15 Ct. of Sess.
 Cas. 21.

Agreement to underwrite shares : underwriter a contributory.

- Licensed Victuallers, &c., Assoc.*,
Audain's Case, 42 Ch. D. 1.

Underwriter not a contributory.

- Harvey's Oyster Co., Ormerod's*
Case [1894], 2 Ch. 474.
Brussels Palace of Varieties v.
Prockter, 10 T. L. R. 72.

Shares invalidly issued : allottee not a contributory.

- Stace & Worth's Case*, 4 Ch. 682.

Unless estopped by his conduct.

- Campbell's Case*, 9 Ch. 1.
Croom's Case, 16 Eq. 417.
Miller's Dale, &c., Co., 31 C. D.
 211.
Briton Medical, &c., Assoc.,
 W. N. 1889, p. 123.

Issue of shares at a discount invalid.

- Ooregum Gold Co. v. Roper*
 [1892], A. C. 125.
Hirsche v. Sims [1894], A. C. 654.
Almada & Tiritio Co., 38 Ch. D.
 415.
New Chile Gold Mining Co., 38
 Ch. D. 475.
Ante, p. 131.

But holder of such shares may by conduct be estopped from denying liability in respect of them.

- Ex p. Sandys*, 42 Ch. D. 98.
Addlestone Linoleum Co., 37 Ch.
 D. 191.
Arnott's Case, 36 C. D. 702.
Macdonald, Sons & Co. [1894],
 1 Ch. 89.
Eddystone Marine Ins. Co. [1893],
 3 Ch. 9.

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BUTORIES.**AMALGAMATION.** See Part IV.**Amalgamation ultra vires.****Holder of shares under scheme liable.***London & County General Agency Assoc., Hare's Case*, 4 Ch. 503.*Empire Assurance Co., Challis's Case*, 6 Ch. 266.*Part's Case*, 10 Eq. 622.**Not liable.***Oriental & Commercial Bank, Alabaster's Case*, 7 Eq. 273.*Stace & Worth's Case*, 4 Ch. 682.*Empire Assurance Corporation, Dougan's Case*, 8 Ch. 540.*Allison's Case*, 9 Ch. 1.**Not liable where contract to take shares incomplete.***United Ports Co., Wynne's Case*, 8 Ch. 1002.*Beck's Case*, 9 Ch. 392.*Perrett's Case*, 15 Eq. 250.**Nor where ultra vires condition in amalgamation.***Clinch v. Financial Corporation*, 4 Ch. 117.*Irrigation Co. of France, ex p. Fox*, 6 Ch. 176.*Bank of Hindustan, &c., v. Allison, L. R. 6 C. P. 54*, 222.*Campbell & Hippisley's Cases*, 9 Ch. 1.*European Society's Arbitration Act*, 8 Ch. D. 679.**BONUS SHARES.** See *ante*, pp. 131, 132.**BUILDING SOCIETIES.** See cases, Chapter II.**DEATH OF CONTRIBUTORY.** See also p. 147.**Calls on shares after death. Company may have an administration order.***Tomlinson v. Gilby*, 33 W. R. 800.**Such order does not give liquidator priority.***Re Hubback*, 29 Ch. D. 934.**Effect of company making misstatement as to liability of deceased.***Meux's Executors' Case*, 2 De G. M. & G. 522; 4 De G. & S. 331.*Cf. Devala & Co.*, 22 Ch. D. 593.**DIRECTOR'S SHARE QUALIFICATION.****(a) Old form of Article.****Mere acceptance of office by director will not create liability.***Pelotas Coffee Co., Karuth's Case*, 20 Eq. 506.*Wheat Buller Consols, Ex p. Jobling*, 38 Ch. D. 42.*Medical Attendance Assoc., Onslow's Case*, W. N. 1887, p. 79.*Ex p. Cammell* [1894], 2 Ch. 392.*Hutchinson's Case* [1895], 1 Ch. 226.**Only case to contrary.***Bread Supply Ass., W. N.* (1893) 14.**Unless special circumstances occur in conduct of director in accepting office or acting as director.****Director held liable.***Llanharry Hematite Co., Roney's Case*, 4 De G. J. & S. 426.*Disderi & Co.*, 11 Eq. 242.*Great Northern & Midland Coal Co., Currie's Case*, 3 De G. J. & S. 367.*Ballina Light Ry. Co.*, 21 L. R. Ir. 497.*Western of Canada, &c., Oil Co., Carling's Case*, 1 Ch. D. 115.*Esparto Trading Co.*, 12 Ch. D. 191.*Little Down & Ebbw Rocks Co.*, 3 L. T. 483.*Carriage Co-operative Supply Assoc., Roberts's Case*, 27 Ch. D. 322.*Great Oceanic Telegraph Co., Harvard's Case*, 13 Eq. 30.*Leake's Case*, 6 Ch. 469.*North Kent, &c., Ry. Co., Kincaid's Case*, 11 Eq. 192.*Teme Valley Ry. Co., Forbes' Case*, 19 Eq. 353.*British Colonial, &c., Ins. Assoc., Stephenson's Case*, 45 L. J. Ch. 488.*Cf. Portal v. Emmens*, 1 C. P. D. 201, 664; and see *Kipling v. Todd*, 3 C. P. D. 350.*Hampshire Co-operative Milk Co., Purcell's Case*, W. N. 1880, p. 194; see as to this case, 25 C. D. 291.*Ex p. Lord Inchiquin* [1891], 3 Ch. 28.*Bread Supply Association*, W. N. (1893) 14.

DIRECTOR'S SHARE QUALIFICATION—continued.**Director held not liable.**

Polotas Coffee Co., Karuth's Case, L. R. 20 Eq. 506.

Patent Davit, &c., Co., Ranken's Case, 39 L. T. 664.

Australian Steam Navigation Co., Miller's Case, 5 Ch. D. 70.

British Provident Life, &c., Assoc., De Ruvigne's Case, 5 Ch. D. 306.

Self-Acting Sewing Machine Co., 54 L. T. 676.

Maitland's Case, 3 Giff. 28.

Brown's Case, 9 Ch. 102.

Imperial Land Credit Corp., Eve's Case, 16 W. R. 1191.

East Norfolk Tramways Co., Barber's Case, 5 C. D. 963.

Goldie v. Torrance, 10 Ct. of Sess. Cas. (Sc.) 174.

Medical Attendance Assoc., Onslow's Case, W. N. 1887, p. 79.

Bartlett's Case, 17 W. R. 131.

Llanharry Hematite Iron Ore Co., Stock's Case, 4 De G. J. & S. 426.

La Mancha Irrigation & Land Co., Lord Claud Hamilton's Case, 8 Ch. 548.

Marquis of Abercorn's Case, 4 De G. F. & J. 78.

Freehold and General Investment Co., Green's Case, 18 Eq. 428.

Wheal Buller Consols, Ex p. Jobling, 38 Ch. D. 42.

Ex p. Cammell [1894], 2 Ch. 392.

Hutchinson's Case [1895], 1 Ch. 226.

(b) **Under Article in form in Isaac's case.**

Where articles provide that director shall qualify within a month of appointment, and if not "that he shall be deemed to have agreed to take the said shares from the company, and the same shall be forthwith allotted to him accordingly."

Director liable if he accepts office or agrees to do so.

Isaac's Case [1892], 2 Ch. 159.

Hercynia Copper Co. [1894], 2 Ch. 403.

Unless he resigns within the month.
Salisbury-Jones and Dale's Case [1894], 3 Ch. 357.

DIRECTOR'S SHARE QUALIFICATION—continued.**Director allowed a reasonable time to take up shares.**

Re Colombia Chemical Factory Manure and Phosphate Works, Hewitt's Case, 25 Ch. D. 283.

Director not liable as a contributory may be liable for misfeasance under s. 10 of Act of 1890.

British Provident, &c., Assoc., De Ruvigne's Case, 5 Ch. D. 306.

As to misfeasance under s. 10, see
Canadian Land Reclaiming, &c., Co., Coventry & Dixon's Case, 14 Ch. D. 660.

Cavendish Bentinck v. Fenn, 12 A. C. 652.

Re Faure Electric Accumulator Co., 40 Ch. D. 141.

Mere performance of formal acts by director does not of itself create liability.

Eve's Case, 37 L. J. Ch. 844.

National Assurance and Investment Assoc., Ex p. Cotterell, 32 L. J. Ch. 66.

Director liable as a shareholder where articles made him a shareholder in respect of qualifying shares.

North Kent, &c., Ry. Co., Kincaid's Case, 11 Eq. 192.

Portal v. Emmens, 1 C. P. D. 201, 664.

Australian Steam Navigation Co., Miller's Case, 5 Ch. D. 70.

Cf. Anglo-Moravian, &c., Co., Forbes' Case, 8 Ch. 768.

Director giving a conditional consent to act not liable although performing formal acts.

Peninsular, &c., Bank, Austin's Case, 2 Eq. 435.

Resolution of company regulating "the future qualification of a director" means "qualification of a future director," so existing directors not liable.

La Mancha, &c., Co., Lord Claud Hamilton's Case, 8 Ch. 548.

Medical Attendance, &c., Co., Onslow's Case, W. N. 1887, p. 79.

**Directors taking shares as fully paid up—
Held not liable.**

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TION—continued.

- Australian Steam Navigation Co., Miller's Case*, 5 Ch. D. 70.
Anglo-Moravian, &c., Co., Forbes' Case, 8 Ch. 768.
Metropolitan, &c., Co., Brown's Case, 9 Ch. 102.
Cf. British Provident, &c., Assoc., De Ruigne's Case, 5 Ch. D. 306.

Held liable.

- Disderi and Co.*, 11 Eq. 242.
Leeke's Case, 6 Ch. 469.
Barrow's Case, 14 Ch. D. 432.
Canadian Oil Works Corp., Hay's Case, 10 Ch. 293.
Carriage, &c., Assoc., Roberts's Case, 27 Ch. D. 323.
Patent Furnace Co., 4 Times L. R. 152; and see *infra*, Chapter XII.

Provincial directors.

- National Insurance, &c., Assoc., Ex p. Cotterell*, 33 L. J. Ch. 66.
Richards's Home Assurance Assoc., L. R. 6 C. P. 591.

Provisional director, not authorizing any expenditure, not liable.
Carmichael's Case, 17 Sim. 163.

Acquisition of qualifying shares from company.

- Marquis of Abercorn's Case*, 4 De G. F. & J. 78.
Tothill's Case, 1 Ch. 85.
Chapman's Case, 2 Eq. 567.
Stock's Case, 4 De G. J. & S. 426.
Sparling's Case, 24 W. R. 41.
Duke's Case, 1 Ch. D. 620.
Miller's Case, 5 Ch. D. 70.

From vendor.

- Canadian Oil Works Co., Hay's Case*, 10 Ch. 593.

From promoter.

- Carriage, &c., Assoc., Roberts's Case*, 27 Ch. D. 323.
Metropolitan Public Carriage Co., Brown's Case, 9 Ch. 102.
Western of Canada, &c., Oil Co., Carling's Case, 1 Ch. D. 115.
Drum Slate Quarry Co., 55 L. J. Ch. 36.

Director holding shares "in his own right," meaning of.
Pulbrook v. Richmond Mining Co., 9 Ch. D. 610.DIRECTOR'S SHARE QUALIFICA-
TION—continued.

- Bainbridge v. Smith*, 41 Ch. D. 462.

Director applying for new shares in ignorance of allotment of qualification shares, liable for both.

- Fowler's Case*, 14 Eq. 316; but see
Duke's Case, 1 Ch. D. 620.

Where the possession of qualifying shares is a condition precedent to his being a director, the director is not liable.

- Metropolitan Carriage, &c., Co., Brown's Case*, *supra*.
Percy, &c., Co., Hamley's Case, 5 Ch. D. 705.
East Norfolk Tramways Co., Barber's Case, 5 Ch. D. 963.
Percy, &c., Co., Jenner's Case, 7 Ch. D. 132.

Where the shares have been actually registered director is liable.

- A. Levita's Case*, 3 Ch. 36.
Leeke's Case, 6 Ch. 469.
Great Oceanic Telegraph Co., Harward's Case, 13 Eq. 30.
Ilfracombe Ry. Co. v. Nash, 22 L. T. 209.
Duke's Case, 1 Ch. D. 620.

Director signing memorandum of association only liable for shares in respect of which he signs although he subsequently applies for more which are not allotted.

- Tothill's Case*, 1 Ch. 85.
Wheal Buller Consols, Ex p. Jobling, 38 Ch. D. 42.

A director's debt can only be set off against a debt due to him from company when it is actually due.

- Habershon's Case*, 5 Eq. 286.
Brasnett's Case, 32 W. R. 1010.
In Re Land Development Assoc., Kent's Case, 39 Ch. D. 259.
Washington Diamond, &c., Co. [1893], 3 Ch. 95.

A director is not liable if he withdraws from office before allotment.

- Chapman's Case*, 2 Eq. 567.

Or before any shares are applied for or allotted to him.

- Green's Case*, 18 Eq. 428.

DIRECTOR'S SHARE QUALIFICATION—continued.

Or if he is disqualified at the time of his election from being a director.

East Norfolk Tramways Co., Barber's Case, 5 Ch. D. 963.

Or if he withdraws before a reasonable time has elapsed for his taking shares.

In re Pelotas Coffee Co., Karuth's Case, 20 Eq. 506.

Colombia, &c., Co., Hewitt's Case, Brett's Case, 25 Ch. D. 283.

Unless he has signed the memorandum of association, when he is liable in regard to shares for which he has signed.

See *Karuth's Case*, *supra*, and cases, *supra*.

Transfer of shares by directors to escape liability void.

National and Provincial Marine Ins. Co., Gilbert's Case, 5 Ch. 559.

South London Fish Market Co., 39 Ch. D. 324.

Cawley and Co., 42 Ch. D. 209.

DISCOUNT, ISSUE OF SHARES AT.

See *ante*, pp. 131, 167.

FORFEITURE OF SHARES, and see p. 135.

A forfeiture of shares illegally converted is valid where shareholder has acquiesced in conversion.

Financial Corporation, King's Case, 2 Ch. 714.

A shareholder whose shares have been forfeited is not liable as a contributory.

State Fire Ins. Co., Webster's Case, 32 L. J. Ch. 135.

And may prove for damages in the winding-up if they have been irregularly forfeited.

Re New Chile Gold Mining Co., 45 Ch. D. 598.

In a voluntary winding-up the liquidator has no power to cancel forfeiture of shares made prior to commencement of winding-up.

China Steamship Co., Dawes' Case, 6 Eq. 232.

The power of forfeiture remains vested in the directors, with

FORFEITURE OF SHARES—continued.

the sanction of the liquidators or general meeting of the company. If directors all dead, liquidators should call meeting to appoint new ones.

Fairbairn Engineering Co., Ladd's Case [1893], 3 Ch. 450.

When shares are properly forfeited shareholders are not liable as present members.

Blakely Ordnance Co., Needham's Case, 4 Eq. 135.

Cobre Mining Co., Kell's Case, 9 Eq. 107.

Asiatic Banking Co., Ex p. Col-lum, 9 Eq. 236.

Kollman's Ry., &c., Improvement Co., Ex p. Beresford, 3 De G. & S. 175.

Kolman's, &c., Co., Ex p. Bailey, 20 L. J. Ch. 145.

Home Co., &c., Ins. Co., Wollas-ton's Case, 4 De G. & J. 437.

North Hallenbeagle Mining Co., Ex p. Knight, 2 Ch. 321.

Tavistock Iron Works Co., Ly-ster's Case, 4 Eq. 233.

But in certain cases are liable as past members.

Bridger's Case, 4 Ch. 266.

Creyke's Case, 5 Ch. 63.

Irregular forfeiture acquiescence by shareholder.

Held liable notwithstanding forfeiture.

Spackman v. Evans, L. R. 3 H. L. 171.

Houldsworth v. Evans, L. R. 3 H. L. 263.

Prendergast v. Turton, 1 Y. & C. C. C. 98.

Agriculturist Cattle Ins. Co., Stewart's Case, 1 Ch. 511.

Agriculturist Cattle Ins. Co., Stanhope's Case, 1 Ch. 161.

East Kongsberg Co., Biggs' Case, 1 Eq. 309.

Held not liable.

Financial Corporation, King's Case, 2 Ch. 714.

Evans v. Smallcombe, L. R. 3 H. L. 249.

Vale of Neath, &c., Co., Mor-gan's Case, 1 Mac. & Gord. 225.

North Hallenbeagle Mining Co., Ex p. Knight, 2 Ch. 321.

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tinued.**

Cf. Rule v. Jewell, 18 Ch. D. 660; and *Phosphate of Lime Co. v. Green*, L. R. 7 C. P. 43.

No relief where shares properly forfeited.

Sparkes v. Liverpool Waterworks Co., 13 Ves. 428.

China Steamship Co., Dawes' Case, 6 Eq. 232.

Cf. Clarke's Case, 21 W. R. 429.

**FORFEITURE OF SHARES AGREED
TO BE TAKEN.**

Held liable because directors had no power to forfeit.

National Patent Steam Fuel Co., Ex p. Barton, 4 De G. & J. 46.

Held not liable directors having power to forfeit.

Kolman's Ry., &c., Improvement Co., Beresford's Case, 3 De G. & Sm. 175.

If forfeiture is collusive shareholder remains liable.

Agriculturist, &c., Co., Stanhope's Case, 1 Ch. 161.

Gower's Case, 6 Eq. 77.

**GOODS SUPPLIED. PAYMENT FOR,
BY SHARES.**

Part payment in shares. Vendors are liable as contributories, but have a lien on property for unpaid cash.

Patent Carriage Co., Gore and Durant's Case, 2 Eq. 349.

Option of company to pay in shares cannot be exercised after winding-up.

Sharon's Case, W. N. 1866, p. 231.

Set off as to debt due, and see p. 128.

Manchester Finance Corporation, 22 W. R. 41; but see s. 25 Act of 1867, and cases ante, p. 164.

INFANTS.

Transferor remains liable on transfer to.

Electric Telegraph Co. of Ireland, Reid's Case, 24 Beav. 318.

China, &c., Coal Co., Capper's Case, 3 Ch. 458.

INFANTS—continued.

Imperial, &c., Credit Assoc., Richardson's Case, 19 Eq. 588.

Asiatic Banking Corporation, Symon's Case, 5 Ch. 298.

Cobre Mining Co., Weston's Case, 5 Ch. 614.

National and Provincial Marine Ins. Co., Maitland's Case, 38 L. J. Ch. 554.

Imperial Mercantile Credit Assoc., Curtis' Case, 6 Eq. 455.

Burned's Banking Co., Dolmar's Case, 38 L. J. Ch. 85.

Repudiation by liquidator of infant transferee.

Allowed.

Asiatic Banking Co., Symon's Case, supra.

Imperial Mercantile Credit Assoc., Castello's Case, 8 Eq. 504.

Sassoon's Case, 20 L. T. 161, 424.

Refused.

European Central Ry. Co., Parson's Case, 8 Eq. 656.

Blakely Ordnance Co., Lumsden's Case, 4 Ch. 31.

When right of company to reject infant transferee is lost by laches.

Maxwell's Case, 24 Beav. 321.

European Central Ry. Co., Parson's Case, 8 Eq. 656.

Contract Corporation, Gooch's Case, 8 Ch. 266; and see cases above.

Fraudulent representation by infant.

Wright v. Snowe, 2 De G. & S. 321.

Acquiescence by infant.

Yeoland Consols, Ltd. (No. 2), 58 L. T. 922, and see cases, ante, p. 154.

Right of infant to recover allotment money on repudiating contract to take shares.

Hamilton v. Vaughan-Sherrin Electrical Co. [1894], 3 Ch. 589.

MARRIED WOMEN.

Hercules Ins. Co., Pugh and Sharmn's Case, 13 Eq. 566.

See under the several headings, p. 163, and supra, p. 151.

MEMORANDUM OF ASSOCIATION.

Subscribers of, liable for shares.

London, &c., Bank, Evan's Case, 2 Ch. 427.

South Blackpool Hotel Co., Migotti's Case, 4 Eq. 238.

United Service Co., Hall's Case, 5 Ch. 707.

Imperial Land Co. of Marseilles, Levick's Case, 40 L. J. Ch. 180.

London, &c., Coal Co., 5 Ch. D. 525.

Robinson and Preston's Brewery, Sydney's Case, 13 Eq. 228.

Argyle Coal, &c., Co., 54 L. T. 233.

Dalton Time Lock Co. v. Dalton, 66 L. T. 704

Cf. Crooke's Mining, &c., Co., Gilman's Case, 31 Ch. D. 420; and *Nanny v. Morgan*, 35 Ch. D. 598.

Unless all shares allotted.

Tal-y-drws Slate Co., Mackley's Case, 1 Ch. D. 247.

Cf. Kipling v. Todd, 3 C. P. D. 350.

Members signing memorandum of association allowed a reasonable time to take shares.

Colombia Chemical Manure Works, Brett's Case, Hewitt's Case, 25 Ch. D. 283.

If memorandum is signed by an agent verbally authorized principal is liable.

Whitney Partners, Ltd., Ex p. Callan, 32 Ch. D. 337.

Subsequent application for additional shares held to include shares for which memorandum was signed.

Crooke's Mining Co., Gilman's Case, 31 Ch. D. 420.

Dunster's Case [1894], 3 Ch. 473.

A person subscribing memorandum for fully paid up shares and also for ordinary shares not liable for the fully paid up, but liable for the ordinary shares.

Baron de Beville's Case, 7 Eq. 11.

Baglan Hall Colliery Co., 5 Ch. 346; and see *Pen' Allt Silver, &c., Mining Co., Fothergill's Case*, 8 Ch. 270.

Registration unnecessary to create liability where memorandum has been subscribed.

MEMORANDUM OF ASSOCIATION

—continued.

Evan's Case, 2 Ch. 427.

Hall's Case, 5 Ch. 707.

Obligation of the subscriber of a memorandum of association to take shares satisfied by shares otherwise applied for.

Freen & Co., 15 W. R. 166.

China, &c., Coal Co., Drummond's Case, 4 Ch. 772.

The Heyford Co., Pell's Case, 5 Ch. 11.

New Buxton Lime Co., Duke's Case, 1 Ch. D. 620.

Crooke's Mining Co., Gilman's Case, 31 Ch. D. 420.

Dunster's Case [1894], 3 Ch. 473.

Obligation not satisfied by the allotment of nominally paid-up shares, money or money's worth necessary.

Satisfied.

China, &c., Coal Co., *ubi supra*.

The Heyford Co., Pell's Case, ubi supra.

Baglan Hall Colliery Co., 5 Ch. 346.

Pellatt's Case, 2 Ch. 527.

Bosworthen, &c., Mining Co., Jones' Case, 6 Ch. 48.

Matlock Old Bath, &c., Co., Maynard's Case, 9 Ch. 60.

Not satisfied.

South Blackpool Hotel Co., Migotti's Case, 4 Eq. 238.

The Heyford Co., Forbes and Judd's Case, 5 Ch. 270.

Leeke's Case, 6 Ch. 469.

Pen' Allt Silver, &c., Mining Co., Fothergill's Case, 8 Ch. 270.

Anglo-Moravian Co., Dent's Case, 8 Ch. 768.

Directors have no power to cancel allotment to subscriber of memorandum of shares for which he subscribed.

London and Provincial Consolidated Coal Co., 5 Ch. D. 525.

Esparto Trading Co., 12 Ch. D. 191.

Ex p. Watson, 54 L. T. 233.

When articles of association altered after signature of memorandum, shareholders deemed to become acquainted with variations with reasonable

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diligence, or they will be bound by acquiescence.

Barned's Banking Co., Peel's Case, 2 Ch. 674.

Oakes v. Turquand, L. R. 2 H. L. 325.

Lennox Publishing Co., Ex p. Storey, 62 L. T. 791.

MORTGAGE OF SHARES, and see p. 92.

A legal mortgagee of shares is liable as a contributory.

Asiatic Banking Corporation, Royal Bank of India's Case, 4 Ch. 252.

Patent Paper, &c., Co., Addison's Case, 5 Ch. 294.

Land Credit Co. of Ireland, Weikersheim's Case, 8 Ch. 831.

Cf. Sheffield, &c., Building Soc. v. Aizlewood, 44 Ch. D. 412.

But an equitable mortgagee is not liable.

Joint Stock Discount Co., Sichell's Case, 3 Ch. 119.

Sale by equitable mortgagee with authority to sell. Company must register purchaser's name.

Kimberley North Block Diamond Mining Co., Werner's Case, 59 L. T. 579.

Doctrine as to the priority of mortgages of choses in action does not apply to mortgages of shares of companies registered under the Act of 1862.

Société Générale de Paris v. Tramways Union Co., 11 App. Ca. 20.

Cf. Bradford Banking Co. v. Briggs, 12 App. Ca. 29.

Loan to a company on security of its own shares, renders lender liable.

Patent Paper Manufacturing Co., Addison's Case, 5 Ch. 294.

Matlock Old Bath, &c., Co., Manchester Finance Co.'s Case, 22 W. R. 41.

PLACING SHARES.

Agreement to place does not amount to agreement to take shares.

Monarch Ins. Co., Gorrisen's Case, 8 Ch. 507.

Cf. Licensed Victuallers' Assoc.

PLACING SHARES—continued.

Ex p. Audain, 42 Ch. D. 1; and *Ormerod's Case* [1894], 2 Ch. 392.

REGISTRATION OF SHARES, and see p. 177.

Delay by company releases applicant from liability.

Nichol's Case, 29 Ch. D. 421.

See also

Kipling v. Todd, 3 C. P. D. 350.

Registration held not a condition precedent to liability.

Portal v. Emmens, 1 C. P. D. 201, 664.

Wolverhampton Waterworks Co. v. Hawksford, 6 C. B. N. S. 336; 7 C. B. N. S. 795; 11 C. B. N. S. 456.

Cf. Kipling v. Todd, 3 C. P. D. 350; and *Irish Peat Co. v. Phillips*, 30 L. J. Q. B. 363.

Semble entry on register is a condition precedent, according to s. 23 of Act of 1862.

Nichol's Case, 29 Ch. D. 421.

As to "subscribers of memorandum" see *supra*.

RELEASE.

Release of future claims to dividends by shareholder on dissolution does not necessarily exempt shareholder from liability as contributory.

Ex p. Apps, 18 L. J. Ch. 409.

REPUDIATION OF SHARES, and see p. 141.

Fraud of company does not give shareholders a right to repudiate to prejudice of creditors.

Henderson v. British Royal Bank, 7 E. & B. 356.

Daniel v. British Royal Bank, 1 H. & N. 681.

Powis v. Harding, 26 L. J. C. P. 107.

Owerend, Gurney, & Co., Ex p. Oakes & Peek, L. R. 2 H. L. 325.

Alteration of the articles of association after application.

No ground for repudiation by shareholder if objects of company not altered.

Lyon's Case, 35 Beav. 646.

REPUDIATION OF SHARES—continued.

Shareholder cannot repudiate where variation between prospectus and articles of association, unless prompt.

Hop and Malt, &c., Co., Briggs' Case, 1 Eq. 483.

Madrid Bank, Wilkinson's Case, 2 Ch. 536.

Barned's Banking Co., Peel's Case, 2 Ch. 674.

Athenæum Life Assurance Soc., Sheffield's Case, Johns. 451.

Oakes v. Turquand, L. R. 2 H. L. 325.

Amazon, &c., Co., Blackburn's Case, Ex p. Hutchinson, 8 De G. M. & G. 177.

Russian Ironworks Co., Kincaid's Case, 2 Ch. 412.

Russian Ironworks Co., Whitehouse's Case, 3 Eq. 790.

Russian Ironworks Co., Taite's Case, 3 Eq. 795.

Lennox Publishing Co., 62 L. T. 791.

If prompt he can repudiate.

British and American Steam, &c., Co., Goldsmid's Case, 16 Beav. 262.

British and American Steam, &c., Co., Meyer's Case, 16 Beav. 383.

Merionethshire Slate, &c., Co., 3 Jur. N. S. 460.

Russian Ironworks Co., Webster's Case, 2 Eq. 741.

Russian Ironworks Co., Stewart's Case, 1 Ch. 574.

Scottish Universal Finance Bank, Ship's Case, 2 De G. J. & S. 444; see also *Downes v. Ship*, L. R. 3 H. L. 343.

Bowron, Baily & Co., Baily's Case, 3 Ch. 592.

Repudiation before notice of allotment releases applicant from liability.

Ramsgate Hotel Co. v. Montefiore, L. R. 1 Ex. 109.

Ritso's Case, 4 Ch. D. 774.

Cardiff, &c., Iron Co., Gledhill's Case, 3 De G. F. & J. 713.

Delay in repudiation estops shareholder from repudiating his shares.

Madrid Bank, Wilkinson's Case, 2 Ch. 536.

Overend, Gurney & Co., Ex p.

REPUDIATION OF SHARES—continued.

Oakes and Peek, L. R. 2 H. L. 325.

Barned's Banking Co., Peel's Case, 2 Ch. 674.

Venezuela Ry. Co. v. Kisch, L. R. 2 H. L. 99.

Ashley's Case, 9 Eq. 263.

Paule's Case, 4 Ch. 497.

Scholey v. Central Ry. Co. of Venezuela, 9 Eq. 266, n.

Hare's Case, 4 Ch. 503.

Russian Ironworks Co., Taite's Case, 3 Eq. 795.

Boyle's Case, 54 L. J. Ch. 550.

Sheffield's Case, Johns. 451.

Mixer's Case, 4 De G. & J. 575.

Hop and Malt, &c., Co., Briggs' Case, 1 Eq. 483.

Scottish Petroleum Co., Wallace's Case, 23 Ch. D. 413.

Kent v. Freehold Land Co., 3 Ch. 493.

Perrett's Case, 15 Eq. 250.

Unless his delay was from proper causes.

McNeil's Case, 10 Eq. 503.

Bowron, Baily & Co., Baily's Case, 3 Ch. 592.

Russian Ironworks Co., Stewart's Case, 1 Ch. 574.

Argyle Coal, &c., Co., 54 L. T. 233.

SCRIP CERTIFICATES.

Holders of, at date of winding-up order, liable.

Mexican and South American Co., Ex p. Grisewood, 4 De G. & J. 544.

Mexican and South American Co., Ex p. De Pass, 4 De G. & J. 544.

Mexican and South American Co., Findlay's Case, 26 Beav. 182.

Mexican and South American Co., Barclay's Case, 26 Beav. 177.

Transferors liable though they transfer before order if acting *malâ fide*.

Mexican and South American Co., Lund's Case, 27 Beav. 465.

Costello's Case, 2 De G. F. & J. 302.

But not liable if acting *bonâ fide*.
Eustace v. Dublin Trunk, &c., Ry., 6 Eq. 182.

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BUTORIES.**SCRIP CERTIFICATES**—*continued*.

Allottee of scrip not a shareholder.
Littlehampton, &c., Steamship Co., Ormerod's Case, 5 Eq. 110.

Cf. Asiatic Banking Co., Collum's Case, 9 Eq. 236; and also *McEuen v. West London, &c., Co.*, 6 Ch. 655.

Where holder of certificate is not entered on register until after call made, he is not liable.
Newry, &c., Ry. Co. v. Edmunds, 17 L. J. Ex. 102.

SHARES HELD BY TRUSTEES FOR COMPANY.

Trustees not liable.
West Hartlepool Iron Co., Gray's Case, 1 Ch. D. 664.

SUBDIVISION OF SHARES.

Illegal.
But transferees liable.
Feiling & Rimington's Case, 2 Ch. 714.
So are allottees, though subdivision has been subsequently confirmed if original shares can be traced.
New Zealand Banking Corporation, Sewell's Case, 3 Ch. 131.

SURRENDER OF SHARES, see p. 135.

Surrender ultra vires the directors.
Shareholder held liable.

Spackman v. Evans, L. R. 3 H. L. 171.

Houldsworth v. Evans, L. R. 3 H. L. 263.

Agriculturist Cattle Insurance Co., Stewart's Case, 1 Ch. 511.

Agriculturist Investment Co., Stanhope's Case, 1 Ch. 161.

Patent Paper, &c., Co., Addison's Case, 5 Ch. 294.

Marlybone Joint Stock Bank, Stanhope's Case, 3 De G. & S. 198.

Shareholder held not liable.
Evans v. Smallcombe, L. R. 3 H. L. 249.

Morgan's Case, 1 De G. & S. 750.

Agriculturist Cattle Insurance Co., Brotherhood's Case, 31 L. J. Ch. 861.

Directors accepting surrender from

SURRENDER OF SHARES—*continued*.

shareholder who has signed memorandum of association.

Shareholder liable.

United Service Co., Hall's Case, 5 Ch. 707.

Robinson & Preston's Brewery Co., Sydney's Case, 13 Eq. 228.

Not liable.

Natal Investment Co., Snell's Case, 5 Ch. 22.

As to directors' powers to accept surrenders, see

Shackleford & Co. v. Dangerfield, L. R. 3 C. P. 407.

Munt's Case, 22 Beav. 55.

Teasdale's Case, 9 Ch. 54.

Cf. Hope v. Financial Society, 4 Ch. D. 327.

Cf. as to powers of a company to purchase its own shares.

Trevor v. Whitworth, 12 App. Cas. 409.

Clayton Mills Manufacturing Co., 37 Ch. D. 28.

Surrender may be accepted though applied for on invalid grounds where valid grounds exist.
Wright's Case, 7 Ch. 55.

Surrender of inchoate rights of directors to shares need not be as express as if shares actually allotted.

Kipling v. Todd, 3 C. P. D. 350.

Kipling v. Allan, *ibid.*

Mammatt v. Brett, 54 L. T. 165.

Ultra vires surrender not good as forfeiture.

United Service Co., Hall's Case, 5 Ch. 707.

Surrender of shares applied for conditionally.

Surrenderor liable.

Patent Paper Co., Addison's Case, 5 Ch. 294; and see p. 135.

TRANSFER OF SHARES, and see p. 137, *seq.*

To nominee of company.

Transferor held liable after.

Patent Paper Co., Addison's Case, *supra*.

Held not liable.

London & County Assurance Society, Jessop's Case, 2 De G. & J. 638.

TRANSFER OF SHARES—continued.

Holwey's Case, 1 De G. & S. 777.

Phoenix Fire Insurance Co., Reeve's Case, 10 W. R. 817.

Grady's Case, 1 De G. J. & S. 488.

Directors cannot independently of articles of association refuse to register a transfer.

Smith, Knight, & Co., Weston's Case, 4 Ch. 20.

National and Provincial Marine Insurance Co., Gilbert's Case, 5 Ch. 559.

Taft v. Harrison, 10 Hare, 489.

Reg. v. Liverpool and Manchester Ry. Co., 21 L. J. Q. B. 284.

Birmingham v. Sheridan, 33 Beav. 660.

Joint Stock Discount Co., Shipman's Case, 5 Eq. 219.

Imperial Mercantile Credit Association, Payne's Case, 9 Eq. 223.

Imperial Mercantile Credit Association, Williams's Case, 9 Eq. 225, n.

Stranton Iron and Steel Co., 16 Eq. 559.

Bentham Mills Spinning Co., 11 Ch. D. 900.

Stockton Malleable Iron Co., 2 Ch. D. 101.

Moffat v. Farquhar, 7 Ch. D. 591.

London Founders' Association and Palmer v. Clarke, 4 T. L. R. 337.

Holden's Case, 8 Eq. 444.

Cawley & Co., 42 Ch. D. 209.

If directors, by the articles of association, can refuse to register transfer, they must exercise power reasonably.

Robinson v. Chartered Bank, 1 Eq. 32.

But they need not give reason for refusing, and in absence of evidence to the contrary the Court will hold that they acted reasonably.

Gresham Life Assurance Co., Ex p. Penney, 8 Ch. 446.

Coalport China Co. [1895], 2 Ch. 404.

And company is not bound to give transferor notice of their refusal to register.

Gustard's Case, 8 Eq. 438.

If the registration of transfer is E.W.

TRANSFER OF SHARES—continued.

correct the Court cannot interfere.

Birmingham v. Sheridan, 33 Beav. 660.

Overend, Gurney & Co., Walker's Case, 2 Eq. 554.

Unnecessary delay by company in registering transfer releases transferor from liability.

Joint Stock Discount Co., Nation's Case, 3 Eq. 77.

Union Debenture Co. v. Fletcher, 11 T. L. R. 472.

Informal consent to transfer is binding on company as between itself and transferor.

Bargate v. Shortridge, 5 H. L. C. 297.

Taylor v. Hughes, 2 J. & L. 24.

If consent to transfer obtained by fraud of transferor he remains liable.

Imperial Mercantile Credit Assoc., Payne's Case, 9 Eq. 223.

Ib., Williams's Case, 9 Eq. 225, n.

Conditional consent.

Bank of Hindustan, &c., Harrison's Case, 6 Ch. 286.

Transferor liable if he delays in obtaining consent to transfer.

European Central Ry. Co., Gustard's Case, 8 Eq. 438.

Transfer to directors, transferor held not liable.

London and County Assce. Soc., Jessop's Case, 2 De G. & J. 638.

British Provident, &c., Soc., Grady's Case, 1 De G. J. & S. 488.

Transfer not accepted by transferee.

Transferor liable.

Merchants' Co., Heritage's Case, 9 Eq. 5.

Cartmell's Case, 9 Ch. 691.

Inchoate legal title of transferee insufficient to defeat pre-existing equitable title.

Roots v. Williamson, 38 Ch. D. 485.

Cf. In re Perkins, Ex p. Mexican Santa Barbara Mining Co., 24 Q. B. D. 613.

Though transfer incomplete, transferee liable where he has acted

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as a shareholder, or where transfer has been registered.

Straffon's Executors' Case, 4 De G. & S. 256.

Dixon's Executors' Case, 1 Dr. & Sm. 225.

Maguire's Case, 3 De G. & S. 31.

Sanderson's Case, 3 H. L. C. 696.

Henderson v. Sanderson, Gordon's Case, 3 De G. & Sm. 249.

Ex p. Contract Corp., 3 Ch. 105.

Agriculturist Cattle Ins. Co., Bush's Case, L. R. 6 H. L. 37.

Leisham v. Cochrane, 1 Mo. P. C. N. S. 315.

Robinson's Executors' Case, 2 De G. M. & G. 517.

Bernard's Case, 5 De G. & S. 283.

Cf. Coleman's Case, 1 De G. J. & S. 495; *Bunn's Case*, 2

De G. F. & J. 275; and *Lord R. Montagu's Case, Grey's*

Case, W. N. 1888, pp. 137, 211.

Transfer immediately before voluntary winding-up followed by compulsory order after lapse of more than twelve months.

Transferor not liable.

Taurine Co., 25 Ch. D. 118.

Cf. Chappell's Case, 6 Ch. 902.

Transfer with knowledge officially of an impending call void if there is fraud.

Gilbert's Case, 5 Ch. 559.

But not otherwise.

Cawley & Co., 42 Ch. D. 209.

Transfer, after presentation of petition, to purchaser without knowledge of petition valid if complete, otherwise voidable.

Emmerson's Case, 1 Ch. 433.

Transfer after illegal subdivision valid if shares can be traced.

New Zealand Banking Corp., Sewell's Case, 3 Ch. 131.

Feiling & Rimington's Case, 2 Ch. 714.

Where contract for transfer not complete before presentation of petition, see

Chapman v. Shepherd, Whitehead v. Izod, L. R. 2 C. P. 228.

Irregular transfer.

Transferor held liable.

Land Credit Co. of Ireland,

TRANSFER OF SHARES—continued.

Weikersheim's Case, 8 Ch. 831.

Brown's Case, 19 Beav. 97.

Allin's Case, 16 Eq. 449.

Henderson's Case, 19 Beav. 107.

Bank of Hindustan, China, & Japan, Anderson's Case, 8 Eq. 509.

Transferor held not liable.

Ind's Case, 7 Ch. 485.

Agriculturist Cattle Ins. Co.,

Bush's Case, L. R. 6 H. L. 37.

Taurine Co., 25 Ch. D. 118.

Transfer to impecunious person must be *bonâ fide* or transferor will be liable.

Transferor held liable.

Hatton's Case, 31 L. J. Ch. 340.

National & Provincial Marine Ins. Co., Gilbert's Case, 5 Ch. 559.

National & Provincial Marine Ins. Co., Ex p. Parker, 2 Ch. 685.

Mexican & South American Co., Lund's Case, 27 Beav. 465.

Budd's Case, 3 De G. F. & J. 297.

Joint Stock Discount Co., Shipman's Case, 5 Eq. 219.

Bank of Hindustan, China, & Japan, Ex p. Kintrea, 5 Ch. 95.

Alexander's Case, 9 W. R. 413.

Costello's Case, 2 De G. F. & J. 402.

Hyam's Case, 1 De G. F. & J. 75.

Payne's Case, 9 Eq. 223.

Snow's Case, 19 W. R. 1057.

Mushat's Case, 18 S. J. 202.

European Asce. Soc., Norbury's Case, 18 S. J. 709.

Transferor held not liable.

Humber Ironworks Co., Williams's Case, 1 Ch. D. 576.

Great Wheel Busy Mining Co., King's Case, 6 Ch. 196.

Slater's Case, 35 Beav. 391.

Cf. Smith, Knight, & Co., Weston's Case, 4 Ch. 20.

Harrison's Case, 6 Ch. 286.

Ex p. De Pass, 4 De G. & J. 541.

Smith, Knight, & Co., Battie's Case, 18 W. R. 620.

TRANSFER OF SHARES—*continued.*

The executor of a deceased shareholder is liable until the company approves the legatee.

Gouthwaite's Case, 3 Mac. & Gord. 187; 3 De G. & S. 258.

Keen's Executors' Case, 3 De G. M. & G. 272.

Agriculturist Cattle Co., Baird's Case, 5 Ch. 725.

Cf. Hall's Case, 1 Mac. & Gord. 307; and *Ness v. Armstrong*, 4 Ex. 21.

Armstrong's Case, 1 De G. & S. 565.

Acceptance by company of executor legatee who is only liable in representative capacity.

Bulmer's Case, 33 Beav. 435.

Death of transferee without personal representatives will not make transferor liable.

Fyfe's Case, 4 Ch. 768.

Delay in transfer—

Between the parties renders transferor liable.

Anglo-Danubian Steam Navigation Co., Walker's Case, 6 Eq. 30.

Head's Case, 3 Eq. 84.

White's Case, 3 Eq. 84.

Marshall v. Glamorgan Iron Co., 7 Eq. at p. 137.

Lord R. Montagu's Case, W. N. 1888, p. 137.

Grey's Case, W. N. 1888, p. 137.

London, Hamburg, &c., Bank, Ward and Henry's Case, 2 Ch. 431.

Cf. Evans v. Wood, 5 Eq. 9.

But if delay is by company, transferor not liable.

Joint Stock Discount Co., Nation's Case, 3 Eq. 77.

Hill's Case, 4 Ch. 769, n.

Lowe's Case, 9 Eq. 589.

Fyfe's Case, 4 Ch. 768.

Manchester & Oldham Bank, W. N. 1885, p. 169.

Cf. Shipman's Case, 5 Eq. 219; and *Shepherd's Case*, 2 Ch. 16.

The issue of a dividend warrant to a wrongly described transferee does not make him liable.

Bishop's Case, 7 Ch. 296, n.

Transfer to infant, see *supra*.

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Transfer by infant transferee.

Curtis's Case, 6 Eq. 455.

Transfer for value of unpaid as fully paid shares.

Cf. cases under s. 25 of Act of 1867, p. 128.

Transfer with certificate that shares are fully paid up.

Transferee held not liable.

British Farmers' Cake Co., 7 Ch. D. 533; *S. C. as Burkinshaw v. Nicolls*, 3 A. C. 1004.

A. W. Hall & Co., 37 Ch. D. 712.

New Chile Gold Co., W. N. (1892), p. 193.

Balkis Consolidated Co. v. Tomkinson [1893], A. C. 396.

Parbury's Case [1896], 1 Ch. 100. See also *ante*, p. 133.

Transferee held liable.

Vulcan Ironworks Co., W. N. 1885, p. 120.

London Celluloid Co., Bayley & Hanbury's Cases, 32 Ch. D. 190.

Norham Castle Ship Co., 4 T. L. R. 303.

Transfer with certification. "Certificate lodged" no warranty of transferor's title; no estoppel.

Bishop v. Balkis Consolidated Co., 25 Q. B. D. 512.

Misdescription of transferee, when immaterial.

Humber Ironworks Co., Williams's Case, 1 Ch. D. 576.

European Bank, Master's Case, 7 Ch. 292.

Smith, Knight, & Co., Hakim's Case, 7 Ch. 296, n.

Financial Ins. Co., *ib.*

Smith, Knight, & Co., Battie's Case, 18 W. R. 620.

Blank transfer.

Inoperative where a deed required.

Swan v. North British Australasian Co., 7 H. & N. 603; 2 H. & C. 175.

Hibblewhite v. McMorine, 6 M. & W. 200.

Powell v. London & Provincial Bank [1893], 2 Ch. 555.

See, however, *Barned's Banking Co.*, *ex p. Contract Corporation*, 3 Ch. 105; and *Société*

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Générale v. Walker, 11

A. C. 20.

Balkis Consolidated Co., W.N.

1888, p. 3.

But may be good where the transfer may be by instrument in writing.

Ex p. Sargent, 17 Eq. 273.*Cf. France v. Clarke*, 22 Ch.

D. 830; S. C. 26 Ch. D. 257.

Colonial Bank v. Hepworth, 36 Ch. D. 36.*Kimberley North Block Diamond Mining Co.*, *Ex p.**Werner*, 58 L. T. 305.

Transfer not sealed.

Balkis Consolidated Co., *supra*.

Guarantee by transferor.

Guarantor not contributory.

*Bank of Hindustan, China,**and Japan, Harrison's Case*, 6 Ch. 286.*Shields Marine Insurance**Assoc.*, *Lee & Moor's Case*,

5 Eq. 368.

Transfer after allotment, but before

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requirements of articles complied with, transferee liable.

Morton's Case, 16 Eq. 104.

As to transfer in cost-book companies, see

Northey v. Johnson, 19 L. T. O. S. 104.*Walker v. Bartlett*, 18 C. B. 845.*Toll v. Lee*, 4 Ex. 230; 18 L. J. Ex. 364.

Transfer in scrip companies: holders at date of winding-up liable.

Ex p. Barclay, 26 Beav. 177.*Mexican & South American Co.*,*Ex p. Grisewood*, 4 De G. & J. 544.*Mexican & South American Co.**Ex p. De Pass*, 4 De G. & J. 544.

UNDERWRITING SHARES.

Liability of underwriter to be put on list of contributories, see *ante*, p. 167.

The following summary of cases under s. 38 of the Act of 1867 may also be found useful:—

What contracts are within s. 38.

Charlton v. Hay, 23 W. R. 129.*Cornell v. Hay*, L. R. 8 C. P. 328.*Coal Economizing Gas, &c., Co.*,*Gover's Case*, 1 Ch. D. 182.*Twycross v. Grant*, 2 C. P. D. 469.*Craig v. Phillips*, 3 Ch. D. 722;

S. C. 7 Ch. D. 249, where the case was in part disapproved of.

Capel & Co. v. Sims Ship Composition Co., 58 L. T. 807.

On the one hand—

S. 38 includes all contracts, the knowledge of which might affect the mind of a person in determining whether he would take shares or not.

Twycross v. Grant, *ubi supra*, *per Coleridge, C.J.*, and *Grove and Lindley, JJ.*, and on appeal *per Cockburn, C.J.*, and *Brett, L.J.**Sullivan v. Mitcalfe*, 5 C. P. D. 455; *per Baggallay and Thesiger, L.J.J.**Cf. Cornell v. Hay*, *supra*.

On the other hand—

S. 38 is limited to contracts imposing a liability on the company.

Twycross v. Grant, *ubi supra*, *per Bramwell, L.J.*, and *Kelly, C.B.**Sullivan v. Mitcalfe*, *ubi supra*, *per Bramwell, L.J.*

On the one hand it has been held that a contract entered into by a person before he is a promoter is not within the section.

Coal Economizing Gas Co.,*Gover's Case*, *ubi supra*, *per**James, L.J.*, & *Bramwell, B.**Twycross v. Grant*, *ubi supra*, *per Bramwell, L.J.*And see *Bagnall v. Carlton*, 6 Ch. D. at p. 407; and *Cornell v. Hay*, *ubi supra*.*Cf. Ladywell Mining Co. v.**Brooks*, 35 Ch. D. 400.

On the other hand it has been held that such contracts are within the section.

Coal Economizing Gas Co.,

Gover's Case, *ubi supra*, per Mellish, J., and *semble* per Brett, J.

Twycross v. Grant, *ubi supra*, per Coleridge, C. J.; and Grove and Lindley, JJ.

Whether contract need be in writing.

Semble in *Arkwright v. Newbold*, 17 Ch. D. 301; but see *Capel & Co. v. Sims Ship Composition Co.*, *supra*.

Whether contract must be in existence at date of prospectus.

Ib.

Nature of action under this section.

Cornell v. Hay, *ubi supra*.

Right of action belongs to shareholder only.

Ib.

Remedy is against directors only.

Coal Economizing Gas Co., *Gover's Case*, *ubi supra*.

Twycross v. Grant, 2 C. P. D. at pp. 484-5.

Sullivan v. Mitcalfe, 5 C. P. D. at pp. 465-6.

In re Bagnall & Co., 32 L. T. 536.

Effect of death of plaintiff.

Twycross v. Grant, *ubi supra*.

Measure of damages.

Ib.; *Sullivan v. Mitcalfe*, *ubi supra*.

Arkwright v. Newbold, *ubi supra*.

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"Knowingly issue."

Twycross v. Grant, *ubi supra*.

"Promoter."

Ib.; *Bagnall v. Carter*, *ubi supra*.

Emma Silver Mining Co. v. Grant, 11 Ch. D. 918.

Same v. Lewis, 4 C. P. D. 396.

Whaley Bridge, &c., Co. v. Green, 5 Q. B. D. 109.

Lydney and Wigpool Iron Co. v. Bird, 33 Ch. D. 85.

And see *New Sombrero Phosphate Co. v. Erlanger*, 3 A. C. 1218.

Ladywell Mining Co. v. Brooks, *Same v. Huggons*, 35 Ch. D. 400.

Trustee not "officer."

Cornell v. Hay, *ubi supra*.

Contributory mistake by plaintiff.

Lydney v. Wigpool, &c., Co. v. Bird, *ubi supra*.

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CHAPTER IX.

CALLS IN WINDING-UP.

For what calls may be made.
By whom calls made.
How far members are liable.

Bankrupt shareholder.
Set-off.

Chap. IX. For what calls may be made.—Calls in the winding-up may be made for the following purposes:—

CALLS IN
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UP.

(1.) For payment of any sums necessary to satisfy the debts and liabilities of the company (*a*). The debts for the payment of which calls can properly be made are debts of the company; but it is not necessary that they should be established against the company before calls are made in respect of them (*b*).

(2.) For payment of the costs, charges, and expenses of the winding-up (*c*). It should be ascertained to what costs each contributory or set of contributories is liable, and the call should be made for their liquidation accordingly. It should, however, be observed that, where costs have been incurred in proceedings taken for the benefit of all the contributories as a body, they are all rateably chargeable with the costs of those proceedings, although they have been taken unsuccessfully, and although some of the contributories may have already paid more than others towards the discharge of the company's debts. Any temporary injustice resulting from this last circumstance must be set

(*a*) S. 120, and s. 13 of the Act of 1890. See Rules, *post*, p. 352. Rights of shareholders and policyholders considered in *London and Westminster Ass. Co.*, 14 Jur. 929; *Lethbridge v. Adams*, 13 Eq. 547.

(*b*) *Contract Corp.*, 2 Ch. 95, decided under the Acts of 1848-49; *Barned's Banking Co.*, 36 L. J. Ch. 215. See *Marylebone*

Bank, 18 Jur. 281, as to no call being made for a fund which may not be required; *Ex p. Dale*, 1 De G. M. & G. 513.

(*c*) SS. 102, 110. See Chap. XIV. as to costs. As to an unregistered illegal association, see *infra*, p. 186. As to a past member, see *Ex p. Marsh*, 20 W. R. 87.

right afterwards (a). A call for costs may be made before all the assets are got in, and before the exact amount of the costs payable has been ascertained by taxation (b). But if there be laches, the right to have a call made for costs may be lost (c).

(3.) For the adjustment of the rights of the contributories amongst themselves (d). So, calls may be made on shares not fully paid-up, in order to reimburse holders of fully paid-up shares (e). And this is so, with regard to shares issued at a discount, notwithstanding the *dictum* of Lord Herschell in *Ooregum Gold Co. v. Roper* to the contrary effect (f). The duty of the judge to adjust all cross claims between the contributories and the equalization of shares has already been pointed out (g). In certain insurance companies where policy-holders are members, calls should not be made on them before the shareholders (h).

Where the Articles provide that a shareholder advancing sums beyond the amount actually called shall receive interest, such advancing shareholder is entitled on winding-up, and there being surplus assets, to be repaid the amount of his advances, together with interest, up to the repayment of the advances (i). Under such articles, money paid in advance of calls would, in the event of a liquidation, be a good answer to a claim for a call in respect of the amount so paid (i).

Where a company issues (1) £1 shares which are fully paid, and (2) £5 shares on which £1 only is paid, and on winding-up there is a surplus after paying creditors, though a deficit on the total amount of called-up capital, the surplus must be distributed by paying 16s. per share to £1 shareholders, so as to put them in the position of shareholders, who, like the £5 shareholders, had only paid 20 per cent. on the amount of their shares, and then paying all the

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(a) Lindley (5th ed.), 866. See there cited *Preece and Evans's Case*, 2 De G. M. & G. 374; *Ex p. Woolmer*, *ib.* 665; *Gay's Case*, 5 De G. & S. 122; 1 De G. M. & G. 347.

(b) *Gay's Case*, *supra*; *Ex p. Woolmer*, *supra*; *Dale's Case*, 1 De G. M. & G. 513.

(c) *Ex p. A'Beckett*, 2 Jur. N. S. 684.

(d) S. 102.

(e) *Anglesea Colliery Co.*, 1 Ch. 555; *Ex p. Maude*, 6 Ch. 51. See Chap. VIII.

(f) *Railway Time Tables Co.*, *Ex p. Welton* [1895], 1 Ch. 255; and see *supra*, p. 131.

(g) See Chap. VIII., s. 109. See *Marylebone Joint Stock Bank*, 25 L. J. Ch. 650; *Gay's Case*, 5 De G. & S. 122; 1 De G. M. & G. 347.

(h) *Albion Life Ass. Co.*, 16 Ch. D. 83.

(i) *Exchange Drapery Co.*, 38 Ch. D. 171; *Wakefield Rolling Stock Co.* [1892], 3 Ch. 165. See *Wincham Shipbuilding, &c., Co.*, 9 Ch. D. 322.

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shareholders *pro rata*, treating each £5 shareholder as if in respect of each £5 share he were the owner of five £1 shares (*a*).

A liquidator can also enforce a call made by the directors before winding-up (*b*).

By whom calls made.—In voluntary winding-up calls are made by the liquidator under s. 133 (9) of the Act of 1862. In compulsory winding-up the only person with power to make calls is the liquidator under s. 102 of the Act of 1862, and s. 13 of that of 1890 and the rules thereunder (*c*). Therefore where uncalled capital has been charged by the company in favour of debenture-holders, and the company is ordered to be wound up, the Court cannot in the debenture-holder's action order either the receiver or the liquidator to make the call, but can only order the liquidator in the winding-up, but the receiver in the action may be empowered to take proceedings in the name of the liquidator (*d*). A general meeting of a company in voluntary liquidation has power to elect directors, and sanction the exercise by them of powers of enforcing calls by sale or forfeiture of shares (*e*). The meeting would be called by the liquidators under s. 139 of the 1862 Act.

How far members are liable.—The extent of the liability of a contributory to calls will depend on the nature of the company; and, as regards companies formed and registered under the present Act, it will be necessary also to inquire whether he was a member or not at the date of the petition for winding-up. In the case of present members where the company is limited by shares or guarantee, no call can be made for any purpose exceeding the amount, if any, unpaid on the shares (*f*), or the amount of the undertaking entered into on their behalf by the memorandum of association (*g*).

If the notice of call states that interest will be charged

(*a*) *Wakefield Rolling Stock Co.* [1892], 3 Ch. 165.

(*b*) *Stone v. City and County Bank*, 3 C. P. D. 282.

(*c*) *Post*, p. 285.

(*d*) *Fowler v. Broad's Patent Night Light Co.* [1893], 1 Ch. 724.

(*e*) *Fairbairn Engineering Co., Ladd's Case* [1893], 3 Ch. 450.

(*f*) See cases in Chap. VIII. and s. 38(4). As to the nature of a

contributory's liability, see *ante*, p. 155. See *Whitehouse & Co.*, 3 Ch. D. 595, as to the nature of contributions under s. 38.

(*g*) S. 38(5). As to the effect of the winding-up order on share capital of company limited by guarantee, see ss. 90 and 134. See *Lion Mutual Marine Ins. Ass. v. Tucker*, 12 Q. B. D. 176.

on non-payment by a certain day, interest is payable on overdue calls from the day named (a). But although articles provided for interest at £10 per cent., yet on a call made by the liquidators, interest at £5 per cent. only was allowed (b).

If part of the capital of the company has been returned to a holder of paid-up shares, as, for example, by paying him a bonus or dividend out of capital, and not out of profits, he could, it seems, be treated as the holder of shares not paid up, and liable to contribute (c).

A fictitious payment, by taking money from the company and returning it, is no payment at all (d).

It is provided by s. 38 (6), as follows:—"Nothing in this Act contained shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members upon any such policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of such policy or contract" (e).

Where a bank of issue has been registered as a limited company, its members are not entitled to limited liability in respect of its notes; but if the general assets are insufficient, the members, after satisfying the remaining demands of the note-holders, are liable to contribute towards payment of the debts of the general creditors a sum equal to the amount received by the note-holders out of the general assets of the company (f).

The present shareholders of an unlimited company are liable for the debts of the company, the costs of winding-up, and any sums required for the adjustment of the rights of the contributories amongst themselves, in full (g).

If the company was originally unlimited, but is subsequently registered under the Act of 1862, with limited liability, calls can be made on the present shareholders, who were holders whilst the company was unlimited, for

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(a) *Ex p. Lintott*, 4 Eq. 184; *Barrow's Case*, 3 Ch. 784.

(b) *Welsh Flannel Co.*, 20 Eq. 360.

(c) *Stringer's Case*, 4 Ch. 475; *Rance's Case*, 6 Ch. 104; *Cardiff Coal, &c., Co.*, 11 W. R. 1007; *Cardiff Coal, &c., Co. v. Norton*, 2 Ch. 405.

(d) *Leeke's Case*, 6 Ch. 469 (payment of director's shares by promoter); *Disderi & Co.*, 11 Eq. 242

(company's cheque given and returned); *Sykes's Case*, 13 Eq. 255 (director takes back money paid for fees).

(e) *Lethbridge v. Adams*, 13 Eq. 547; *Agriculturist Cattle Ins. Co.*, 10 Ch. 1; *Accidental Death Ins. Co.*, 7 Ch. D. 568.

(f) *Companies Act*, 1879, 42 & 43 Vict. c. 76, s. 6.

(g) See s. 200, as to unregistered companies.

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payment in full of all the debts and liabilities contracted during that time (*a*).

If an order has actually been made to wind up an **unregistered illegal company**, calls can be made upon any contributory for payment of debts proved and not expunged within the proper time, or for costs of winding-up (*b*), although the winding-up order was made without jurisdiction. But an improper winding-up order is not binding on strangers (*c*).

As regards the **unlimited liability of directors** of a limited company, see s. 5 of the Act of 1867 in Appendix.

Bankrupt shareholder (*d*).—Any calls made before a shareholder has been adjudicated bankrupt, whether by the directors whilst a company is a going concern, or by the liquidators when it is being wound up, have always been provable like other debts (*e*).

S. 75 of the Act of 1862 provides that in the bankruptcy of any **contributory** proof may be made against his estate for the estimated liability to future calls as well as calls already made. On this it was, as shortly stated by Lindley, L.J., in his book (*f*), decided: (1) that the liability of a contributory to calls made in a winding-up commenced when he became a member (*g*); (2) that if the winding-up preceded his bankruptcy, all future calls might be proved against his estate (*b*); (3) but where he was adjudicated bankrupt before the winding-up, calls made in the winding-up could not be proved at all (*c*); and consequently in this case the bankrupt remained liable for all calls made while he continued a shareholder. It was considered that s. 31 of the Bankruptcy Act, 1869 (*d*),

(*a*) But see, as to this, Chap. VIII. under "Unregistered Companies." See s. 196 (*5*), as to companies registered under Part VII. *Liverpool Loan Co., Ex p. Stevenson*, 32 L. J. Ch. 96; 11 W. R. 131; *Garnett and Moseley, &c., Mining Co.*, 3 Best & S. 321.

(*b*) *Arthur Average Ass.*, 3 Ch. D. 522; *Queen Average Ass., Ex p. Lynes*, 16 W. R. 432. See *Padstow Total Loss Ass.*, 20 Ch. D. 137; and *Preece & Evans's Case*, 2 De G. M. & G. 374.

(*c*) *Re Bowling and Welby's Contract* [1895], 1 Ch. 663.

(*d*) See also *ante*, p. 150.

(*e*) *Cape Breton Co.*, 19 Ch. D. 77.

(*f*) See the cases in Lindley (5th ed.), pp. 556 *et seq.*

(*g*) *Ex p. Canwell*, 4 De G. J. & S. 539; *Williams v. Harding*, L. R. 1 H. L. 9.

(*h*) *Ex p. Pickering*, 4 Ch. 58; *Mitchell's Case*, 5 Ch. 400; *McEwen's Case*, 6 Ch. 582; *Ex p. Marshall*, 7 Ch. 324; *Ex p. Ball*, 10 Ch. 48; *Financial Corp. v. Lawrence*, L. R. 4 C. P. 731. See *West of England Bank, Ex p. Budden and Roberts*, 12 Ch. D. 288.

(*i*) *Martin's Patent Anchor Co. v. Morton*, L. R. 3 Q. B. 306. See also *Amicable Ins. Co.*, 6 Ir. R. Eq. 272; *Hastie's Case*, 4 Ch. 274.

removed all these difficulties, and that the liability to future calls was provable even where the bankruptcy preceded the winding-up. Some doubt was caused by the decision of *Furdoonjee's Case* (a). But, notwithstanding that case, it has been since decided that the liability in respect of calls of a liquidating member of a company where the liquidation proceedings commence prior to the winding-up of the company, and are pending at the time of the winding-up, is a debt or liability which is not "incapable of being fairly estimated," and which is therefore provable in the liquidation (b). This will apply under s. 37 of the Bankruptcy Act, 1883 (c). So where the trustee neither disclaims nor sells the shares, but allows them to remain in the name of the bankrupt who obtains his discharge, it seems that he will nevertheless be freed from calls in respect of them, as his liability to them was capable of proof (d).

A bankruptcy notice cannot be issued in respect of a balance order for the payment of calls (e).

An order for payment of a call will not be made upon a bankrupt contributory against whose estate the calls can be proved (f).

After a contributory becomes a bankrupt, he is a stranger to the company, and there is no jurisdiction to make any order on his application (g).

Set-off.—Where, in a winding-up, a call is made, the contributory cannot set off a claim against the company for dividends or profits, to the prejudice of the creditors, but the set-off will be allowed in the final adjustment of the rights of the contributories amongst themselves, and this is applicable either to an unlimited or a limited company (h).

S. 101 provides as follows:—

"The Court may, at any time after making an order for winding-up

(a) 32 & 33 Vict. c. 71.

(b) 3 Ch. D. 264.

(c) *Mercantile Mutual Marine Ins. Ass.*, 25 Ch. D. 415, not following *Furdoonjee's Case*, *supra*. See *Ex p. Neal*, 14 Ch. D. 579.

(d) 46 & 47 Vict. c. 52. It seems to be the same whether the disclaimer is before, or after, the winding-up.

(e) Lindley (5th ed.), 556. Cf. ss. 37 and 55 of Bankruptcy Act, 1883.

(f) *Ex p. Grimwade, re Tennent*, 17 Q. B. D. 357 (compulsory

winding-up); *Ex p. Whinney, re Sanders*, 13 Q. B. D. 476 (for calls made before resolution for voluntary winding-up); *Ex p. Mackay, re Shirley*, 58 L. T. 237; *Chalk, Webb, & Co. v. Tennent*, 57 L. T. 598.

(g) *Mitchell's Case*, 5 Ch. 400.

(h) *Cupe Breton Co.*, 19 Ch. D. 77.

(h) S. 38 (7), s. 101. *Grissell's Case*, 1 Ch. 528. The set-off referred to in the proviso to s. 101 evidently relates to dividends and profits.

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the company, make an order on any contributory for the time being settled on the list of contributories, directing payment to be made, in manner in the said order mentioned, of any moneys due from him or from the estate of the person whom he represents to the company, exclusive of any moneys which he or the estate of the person whom he represents may be liable to contribute by virtue of any call made or to be made by the Court in pursuance of this part of this Act; and it may, in making such order when the company is not limited, allow to such contributory by way of set-off any moneys due to him or the estate which he represents from the company, on any independent dealing or contract with the company, but not any moneys due to him as a member of the company in respect of any dividend or profit: Provided that when all the creditors of any company whether limited or unlimited are paid in full, any moneys due on any account whatever to any contributory from the company may be allowed to him by way of set-off against any subsequent call or calls."

If the contributory's claim against the company could be supported if he were not a member, then the question of set-off will depend on whether the company is unlimited or limited.

In the case of an **unlimited** company, it seems that any debts due from the company to the contributory, otherwise than in respect of his shares, may be set off against debts due from the contributory to the company and calls made *before* the winding-up (*a*). But a contributory of an unlimited company cannot set off a debt due to him from the company against calls made *in* the winding-up (*b*).

Where a director of an unlimited company joined with co-directors in a promissory note for £5,000 to a bank to secure repayment of an overdraft by the company with the bank, and, after a call had been made in the winding-up, paid £500 as a contribution in respect of the note, it was held that he was not entitled to set off the £500 against a sum due from him as a contributory for calls (*c*).

In an unlimited company, since the member is liable to contribute to any amount until all the liabilities of the company are settled, it signifies little to the creditor whether set-off is allowed or not (*d*).

On the other hand, where the company is **limited**, a contributory cannot set off a debt due to him from the company, or a dividend which may afterwards come to him on his debt, either against a call made by the liquidator

(*a*) *Marylebone Joint Stock Bank*, 25 L. J. Ch. 650; *Whitehouse & Co.*, 9 Ch. D. 595, 606. But see *Gibbs & West's Case*, 10 Eq. 312; which was not followed in *Ex p. Branwhite*, 48 L. J. Ch. 463. See also *West of England*

Bank, Ex p. Brown, infra.

(*b*) *Ex p. Branwhite, supra.* See s. 101, *supra*.

(*c*) *Norwich Equitable Fire Ass. Co., Brasnett's Case*, 53 L. T. 569.

(*d*) *Per Lord Chelmsford in Grissell's Case*, 1 Ch. 528.

in the winding-up (a), or made by the company before the winding-up (b). This rule is the same whether the company is being wound up by the Court, under supervision, or voluntarily (c); and is not affected by s. 10 of the Judicature Act, 1875 (d); nor by the death of the contributory, and his estate being insolvent (e). Moreover, a limited company has no power to contract with one of its shareholders to give a right of set-off contrary to the rule in *Grissell's Case* (f). But members of limited companies are entitled, on payment of all calls due, to receive dividends at the same time, and at the same rate, as other creditors in the winding-up (g), and again, this is not altered by s. 10 of the Judicature Act, 1875 (h).

There is an exception to the above rule where a contributory, to whom a company in course of being wound up is indebted, becomes bankrupt after the commencement of the winding-up; in which case the debt due to his estate by the company should be set off against the calls (i). And if the contributory have, before his bankruptcy but subsequently to the winding-up, assigned his debt to a third person, the assignee will, it seems, be in the same position as the contributory with respect to the right of set-off (k). And where, after bankruptcy, bills were indorsed to an agent for collection only, the same rule was upheld (l).

See further as to assignees of a debenture, *ante*, p. 105.

So, also, there is a statutory exception by virtue of s. 6 of the Act of 1867, which provides that "in the event of

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(a) *Grissell's Case*, *supra*; *Blanksee Island Co.*, 4 Times L. R. 449. But see, as to a voluntary winding-up, *Brighton Arcade Co. v. Dowling*, L. R. 3 C. P. 175, disapproved in *Whitehouse & Co.*, 9 Ch. D. 595 (where see the clear and exhaustive judgment of Jessel, M.R.), and in *Black & Co.'s Case*, 8 Ch. 254. See *Robert's Case*, *Carriage Co-operative Supply Assoc.*, 27 Ch. D. 322, as to qualification shares and advances made by a director.

(b) *Calisher's Case*, 5 Eq. 214; *Barnett's Case*, 19 Eq. 449. As to a voluntary liquidation, see *Government Security Co. v. Dempsey*, 50 L. J. C. P. 199.

(c) See the two previous notes, and *Hoby & Co. v. Birch*, 59 L. J. Q. B. 247; 62 L. T. 404.

(d) *Gill's Case*, 12 Ch. D. 755.

(e) *Gunn's Case*, 38 L. T. 139.

(f) 1 Ch. 528; *Black & Co.'s Case*, *supra*; although this was doubted in *Calisher's Case*, *supra*.

(g) *Grissell's Case*, 1 Ch. 528. See s. 101, *supra*.

(h) *West of England Bank, Ex p. Brown*, 12 Ch. D. 823.

(i) *Re Duckworth*, 2 Ch. 578; *Ex p. Strang*, 5 Ch. 492. See *Gill's Case*, *supra*. As to a compromise, see *Ex p. Morton, Re Oxford and Canterbury Hall Co.*, 38 L. J. Ch. 390. As to joint and separate demands, see *Ex p. Morier*, 12 Ch. D. 491.

(k) *Ex p. Mackenzie*, 7 Eq. 240, *ante*, p. 121.

(l) *Carralli and Haggard's Claim*, 4 Ch. 174.

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the winding-up of any limited company, the Court, if it think fit, may make to any director or manager of such company whose liability is unlimited the same allowance by way of set-off as under the 101st section of the principal Act it may make to a contributory where the company is not limited."

An agreement that calls shall not be payable in cash, but only by set-off against debts which may afterwards become due from the company is in general not binding on the company (a).

The liquidator cannot disturb a set-off of two debts which has been completed before the commencement of the winding-up; but if the transaction took place in contemplation of the insolvency of the company, it may be void (b).

Where the employment of a person was continued after the liquidation, it was held that the liquidators were not entitled to enforce against him the payment of a call made in the winding-up without bringing the debts due to him in respect of such employment into account (c).

Where a winding-up order is made on a shareholder's petition, and the costs are ordered to be paid to the petitioner, he is entitled to receive these costs without any set-off of calls (d).

In an action brought by the liquidator against a member of a limited company which is being wound up under supervision, a debt due to him from the company before the resolution for the voluntary winding-up cannot be set off against a debt to the company incurred by him after the resolution (e).

In an action by a voluntary liquidator for calls, a counter-claim cannot be made for debt or damages (f).

The right to set-off by a contributory must be considered in connection with s. 25 of the Act of 1867, and where that Act applies, an agreement must be registered (g). But s. 25 of the Act of 1867 (g) has no application in a question in a winding-up of liability to take shares which were

(a) *Richmond Hill Hotel Co., Pellatt's Case*, 2 Ch. 527, and see s. 25 of the Act of 1867, and cases *ante*, p. 127. As to registering any agreement in order to make good a claim to set-off when the shares were issued, *Calisher's Case*, 5 Eq. 214.

(b) *Mason's Hall Tavern Co., Habershon's Case*, 5 Eq. 286; *Spargo's Case*, 8 Ch. 407.

(c) *London and Colonial Co., Ex p. Clark*, 7 Eq. 550.

(d) See p. 244.

(e) *Saukey Brook Coal Co. v. Marsh*, L. R. 6 Ex. 185. See *Brighton Arcade Co. v. Dowling & Whitehouse & Co.*, *supra*.

(f) *Government Security Co. v. Dempsey*, 50 L. J. C. P. 199.

(g) See this section and cases *ante*, p. 127.

never allotted by the company. Therefore, in a winding-up, effect was given to an unregistered contract which was interpreted as entitling a person to set-off against calls on shares, to be allotted to him, moneys to become due to him for work done for the company, no shares having been allotted to him before the winding-up (*a*).

Directors can write off calls due from a shareholder, who is also the **solicitor** of the company, against his bill of costs (*b*).

(*a*) *Norton's Case, Re Victoria change Banking Co.*, 50 L. J. Ch. 827. See also p. 85.
Mansions, 50 L. J. Ch. 454.

(*b*) *Ramwell's Case, Re Ex-*

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Power to compromise.—The liquidator may, with the sanction either of the Court or of the committee of inspection (*a*), in windings-up by the Court, or with the sanction of the Court (*b*), where the winding-up is subject to its supervision, and with the sanction of an extraordinary resolution where there is a voluntary winding-up, settle a **general scheme of liquidation**, and may make arrangements with *creditors* and *contributories*, and compromise *all claims* whether by or against the company (*c*); in fact, he has the same power of effecting a compromise as an individual would possess (*d*). And if the compromise is fair and likely to be beneficial, the Court will not be astute to find technical defects in the proceedings (*e*). The exercise by the liquidator of the powers referred to in s. 12 of the Act of 1890 are subject to the control of the Court, and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of those powers.

SS. 159 and 160 of the Act of 1862 will be found in the Appendix, *post*.

(*a*) See s. (9) of the Act of 1890, as to the Board of Trade where there is no committee.

(*b*) By s. 31 of the Act of 1890, that Act does not, except when expressly mentioned, apply to a winding-up under the supervision of the Court.

(*c*) See ss. 159, 160; s. 12 of the Act of 1890. As to an objection after a compromise, that sanction was not obtained, not being permitted, see *Ex p. McClure, Re English and Scottish Marine*

Insce. Co., 23 L. T. 685. As to whether a general sanction is sufficient, see *South Eastern of Portugal Ry. Co.*, 21 L. T. 220.

(*d*) *Albert Life Ass. Co.*, L. R. 6 Ch. 381, 386. See *Bath's Case*, 8 Ch. D. 334, and 11 Ch. D. 386. As to the division of the amount of a compromise between policy-holders and creditors, see *International Life Ass. Soc.*, 47 L. J. Ch. 88.

(*e*) See *Dynevor, &c., Collieries Co.*, 11 Ch. D. 605.

The liquidator may apply, under s. 160, for the sanction of the Court to a general compromise between creditors and contributories (*a*).

This power of the liquidator extends to making a general compromise of claims upon contributories or creditors as a class, abandoning an equal proportion in each case, notwithstanding the differences of position between the contributories, or without inquiring closely into the means of each individual contributory (*b*).

When a contributory cannot pay calls, he frequently endeavours to make a compromise; and, in this case, he usually makes an affidavit as to his means. If the liquidator considers that this affidavit shews a true statement, or if after cross-examination upon it the liquidator is satisfied, a provisional agreement is entered into previous to an application for the sanction of the judge (*c*). Sometimes an application is made by the liquidator for liberty to compromise without the expense of a provisional agreement.

In voluntary winding-up the liquidator may apply for the Court's sanction to a compromise under s. 138 of the Act of 1862, if he thinks it desirable to do so. Such an application is still regulated by Order 51 of the General Order of November, 1862, the 1890 Act and Rules thereunder not applying to such a case. Order 51 provides that every application under the 138th section shall be made by petition or motion, or if the judge shall so direct, by summons at chambers. The application is usually made by motion. If made by summons it must be an originating summons. The judge may direct the application to be heard by summons when it comes on for hearing (*d*).

In a winding-up under the Act 1862, or subject to supervision, *every application for the sanction of the judge to a compromise with any contributory or other person indebted to the company must be supported by the affidavit of the liquidator that he has investigated the affairs of such contributory or person, and stating his belief that the proposed compromise will be beneficial to the company, and his reasons for such belief* (*e*). The sanction of the judge is to be testified by a

(*a*) *Commercial Bank Corp. of India*, 8 Eq. 241.

(*b*) *Bank of Hindustan, &c.*, v. *Eastern Financial Assoc.*, L. R. 2 P. C. 489.

(*c*) See Forms, *post*, pp. 571-574. E.W.

(*d*) *British Envelope Co.*, W. N. 1885, p. 84.

(*e*) Gen. O. 1862, r. 49. See form of affidavit, *post*, p. 572, and form of memorandum of agreement of compromise, p. 573. There is

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memorandum, signed by the registrar, on the agreement of compromise, unless any party desires to appeal from the decision of the judge, in which case an order must be drawn up for that purpose.

Circulars as to compromises of claims are to be settled by the registrar before issue, and are to contain full particulars of the nature of the proposed compromise in each case (*a*).

The approval of the registrar will be sufficient, but the parties are entitled, if they desire it, to have the matter considered by the judge personally (*b*). No sanction to a compromise will be given by the judge without sufficient evidence as to the circumstances upon which the compromise is to be made; in fact, such evidence as will enable the Court to exercise a judicial discretion in the matter (*c*). And assuming a liquidator to be acting *bonâ fide*, if he does not consent to a compromise with a creditor or contributory, the Court will not compel him to enter into it (*d*).

It does not appear to be clear to what extent a liquidator in a winding-up under supervision can act without the sanction of the Court by virtue of s. 151 (*e*).

The Court, in the case of a **voluntary winding-up**, must be satisfied that the compromise is a fair one, although it has been sanctioned by a general meeting (*f*). The onus of impeaching an agreement or showing its unfairness falls on the person objecting (*f*).

The Court had no power, under the 159th and 160th sections, to sanction an arrangement by which a **minority of creditors** would be bound to accept a compromise against their will (*g*). The sections do not contain any provisions enabling a majority of the creditors to bind the whole body, but the minority is bound where proceedings are taken under the Joint Stock Companies Arrangement Act of 1870 (*h*), which is discussed *post*, Part IV., p. 446. Previously to that Act, the only power to bind a **minority of creditors** was that contained in s. 136 of the 1862 Act.

no similar rule under the new practice.

(*a*) *Central Darjeeling Tea, &c., Co.*, 15 L. T. 231.

(*b*) *Ex p. Garstin*, 10 W. R. 457.

(*c*) *Northumberland, &c., District Banking Co., Ex p. Totty*, 1 Dr. & Sm. 273; *Re South Eastern of Portugal Ry. Co.*, 21 L. T. 220.

(*d*) *Hankey's Case*, 26 L. T. 358.

See *East of England Banking Co., Pearson's Case*, 7 Ch. 309.

(*e*) See *James v. May*, L. R. 6 H. L. 328; *Wright's Case*, 5 Ch. 437. See s. 151.

(*f*) *Lana Coal Co., Ex p. Miller*, 2 Ch. 692.

(*g*) *Albert Life Ass. Co.*, 6 Ch. 381.

(*h*) 33 & 34 Vict. c. 104, s. 2.

That section, which, although obsolete, is still in force, only applies when the company is being or is about to be wound up voluntarily; an extraordinary resolution of the company is required, and also the sanction of three-fourths in number and value of the creditors. In practice this section is seldom, if ever, made use of, proceedings generally being taken under the Act of 1870. It may, however, be pointed out that circumstances might arise in which the machinery of s. 136 would be preferable to that of the Act of 1870; for instance, the Act of 1870 only applies where the company is in liquidation, and if it is doubtful whether the necessary majority of creditors can be obtained, it might be better to proceed under s. 136, which applies where a company is about to be wound up; otherwise the company may find itself in the unpleasant position of having resolved upon winding-up in order to invoke the jurisdiction of the 1870 Act, and yet unable to carry out the arrangement for want of the necessary majority of creditors. Moreover, no application to the Court is necessary under s. 136, and it may be advisable to avoid publicity.

The Court has power to stay the winding-up proceedings, and to sell the assets (a), and, as just seen, to compromise with the creditors and contributories.

A compromise with the sanction of the Court is binding on all parties, including creditors, unless appealed against (b). A compromise made with a holder of shares at the date of the winding-up does not take away the liability of his transferor, who may be placed on the list of contributories as a past member (c), the case being one, not of principal and surety, but of statutory liability (d). But the transferee of shares, notwithstanding a compromise with him, remains liable under his implied contract to indemnify his transferor who is called upon to pay as a past member (e).

Claims by individual shareholders against the directors

(a) S. 95.

(b) For examples of compromises, as to creditors, &c., see *Smith, Knight, & Co.*, 16 W. R. 1104; *Paraguassu Tramway Co.*, 28 L. T. 463; *Lucy's Case*, 4 De G. M. & G. 356; *Underwood's Case*, 5 ib. 577; *Ex p. Morton, Re Oxford and Canterbury Hall Co.*, 38 L. J. Ch. 390. But see *Commercial Bank Corp. of India*, 8 Eq. 241. As to enforcing compromises with

strangers, see *Gaudet Frères Steamship Co.*, 12 Ch. D. 882. As to the conveyance by the contributory as consideration for compromise, see *Clark v. Glasgow Bank*, 9 C. of S. Cas. 1063 (Sc.).

(c) *Nevill's Case*, 6 Ch. 43.

(d) *Hellert v. Banner*, L. R. 5 H. L. 28; *Hudson's Case*, 12 Eq. 1.

(e) *Roberts v. Crowe*, L. R. 7 C. P. 629; *Kellock v. Enthoven*, L. R. 9 Q. B. 241.

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Chap. X. personally are not such matters as the Court has power to sanction under s. 160 (a).

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As to the right of contributories in an unlimited insurance company, who have not compromised, to require that the amounts received under the compromise should be marshalled between the liability for costs and the liability under policies, see the case below (b).

Rescinding compromise.—A compromise to which the sanction of the Court has been obtained by the misrepresentation or concealment of material facts, will be set aside either by the Court or the judge in chambers (c).

(a) *New Zealand Banking Corp., Ex p. Hankey*, W. N. 1622, p. 869.

(b) *Accidental Death Ins. Co.*, 7 Ch. D. 568.

(c) *Ex p. Clarke, Re Leeds Banking Co.*, 14 W. R. 856;

Central Darjeeling Tea Co., W. N. (1866), p. 361; *Ex p. Garstin*, 10 W. R. 457. See as to non-disclosure of material fact, *Turner v. Green* [1895], 2 Ch. 205.

CHAPTER XI.

PRELIMINARY EXAMINATION OF OFFICIALS AND OTHERS.

Examination of officials, &c.	What questions must be answered.
Examination under s. 115.	Shorthand note.
Who may be examined under s. 115.	Filing and inspection of depositions.
How the application is to be made.	Use of depositions as evidence.
Securing attendance.	

Examination of officials, &c.—Under the Companies Acts there are three entirely independent provisions for the examination of directors and officials of a company in liquidation, viz.—

(1.) S. 115 of 1862 Act. **Inquisitorial.**—To acquaint the liquidator with the true state of the facts as to the matters inquired into. This section gives power to summon a man not as witness but for purposes of discovery (*a*).

(2.) S. 8 of 1890 Act. **Public.**—Apparently meant to deter fraud by means of publicity.

(3.) S. 10 of 1890 Act. **Punitive.**—Providing summary procedure against delinquent directors, promoters, &c.

As to the evidence of persons not within the above three heads, the ordinary procedure of the High Court applies, which is outside the scope of this work.

S. 8 of the 1890 Act, with notes of the decisions thereon, will be found in Part II., *post*, p. 275. S. 10 of that Act is dealt with in the next chapter, *post*, p. 207, and also in Part II., *post*, p. 280. This chapter deals only with s. 115 of the 1862 Act.

Examination under s. 115 of 1862 Act.—By this section, the Court is empowered, after a winding-up order has been made, to summon (*b*) before it any officer of the company, or any person known or suspected to have in his possession any of the estate or effects of the company, or supposed to be indebted to it, or any person whom the Court may deem capable of giving information concerning the trade,

(*a*) *Ex p. Willey*, 23 Ch. D. 118; (*b*) See Form No. 202, *post*, p. 574.
Re Hewitt, 15 Q. B. D. 159.

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dealings, estate, or effects of the company (*a*), whether the matters occur in or before the winding-up (*b*). Any such person may be required to produce any books or documents in his power relating to the company. And the Court may examine him upon oath concerning its affairs, &c. (*c*). It is not necessary that there should be a particular dispute pending, but it is sufficient if the liquidator requires to obtain discovery (*d*).

The power given by s. 115, though it is a strong power, is intended to put the liquidator, so far as can be, in the same position as if he were making inquiries through his solicitor from persons who are willing to give information; the object is that he may see what it is advisable for him to do (*e*). The power may be used for the purpose of ascertaining a person's ability to pay a debt to the company, in following moneys of the company, and generally in investigating transactions relating to its estate or effects (*f*).

Who may be examined under s. 115.—The liquidator may properly apply s. 115 for the purpose of ascertaining whether proceedings should be continued or not against an officer of the company, or against any other person (*g*). The Court, probably, would be satisfied with the liquidator taking upon himself the responsibility of informing the Court that there are sufficient reasons to suppose certain evidence could be given (*h*), and that the order would be just and beneficial for the purposes of the winding-up (*i*). It is not necessary to make out a *prima facie* case, but a case of suspicion may be enough (*k*). So, also, if the Court considers that the person is capable of giving information (*l*). The order, however, is not a matter of right (*m*). It is in the discretion of the Court to grant or refuse such an order. There is no hard-and-fast rule as to when it would be proper and when improper to make such an order; but the pendency of an action by the liquidating company, and the fact of discovery in such

(*a*) S. 115.

(*b*) *Ex p. Carver*, 47 L. J. Ch. 702, n.

(*c*) S. 117.

(*d*) *Gold Co.*, 12 Ch. D. 77; *Clement's Case*, 13 Eq. 179, n.

(*e*) *Norwich Equitable Ins. Co.*, 27 Ch. D. at p. 521.

(*f*) *Bloxam's Case*, *infra*; *Clement's Case*, *infra*; *Smith, Knight, & Co.*, *infra*; *Contract Corp.*,

infra.

(*g*) *Ex p. Leaver, Re Metropolitan (Brush) Electric Light and Power Co.*, 51 L. T. 817.

(*h*) See *English Joint Stock Bank*, 3 Eq. 203, 209. See *Financial Ins. Co.*, 36 L. J. Ch. 687.

(*i*) *Heiron's Case*, 15 Ch. D. 139.

(*k*) *Gold Co.*, 12 Ch. D. 77.

(*l*) *Clement's Case*, *supra*.

(*m*) *Heiron's Case*, *supra*.

action having been ordered or refused, are material considerations (a).

The following are instances in which persons have been summoned under s. 115:—

The parties to an action pending between them and the company with respect to the subject-matter of the litigation (b), although leave to continue the action after the winding-up has been given (c); but if interrogatories have already been exhibited by the company, a strong case for further examination must be shewn (d).

A person between whom and the company no proceedings are pending must submit to examination, although he may conceive that such examination is required for the purpose of afterwards taking proceedings against him (e).

A witness who has appeared several times before a special examiner appointed with his consent, cannot refuse to give evidence on the ground that his deposition might be used against him in a pending action which was commenced before the appointment of the special examiner (f).

The powers of s. 115 are given for the more beneficial winding-up of the company, and the Court will not allow them to be used for the purpose of giving to a plaintiff in an action brought to enforce his own individual rights, and which could not be for the benefit of the company, means of discovery beyond those which the law gives to a plaintiff (g).

Further instances of persons who have been examined:—

Relatives of a contributory, such as sister, nephew (h), mother-in-law (i).

Applicants for shares in a false name (k).

An agent of a company claiming commission (l).

Persons possessing any means of information of the affairs of defaulting contributories, or of persons sought to be put on the list of contributories (m).

(a) *North Australian Territory Co.*, 45 Ch. D. 87.

(b) *Massey v. Allen*, 9 Ch. D. 164; *Ex p. Carver*, 47 L. J. Ch. 702, n.; *Ex p. Hakin*, *infra*; *Re Cathcart*, 5 Ch. 703; *Met. Electric Light Co.*, *Ex p. Leaver*, 51 L. T. 817.

(c) *Ex parte Bateman*, 15 W. R. 245.

(d) *Heiron's Case*, *supra*.

(e) *Ex p. Hakin*, *Re Contract Corporation*, 15 L. T. 552.

(f) *Lisbon Steam Tramway Co.*, 2 Ch. D. 575; *Met. Electric Light Co.*, *Ex p. Leaver*, 51 L. T. 817.

(g) *Imperial Continental Water Corp.*, 33 Ch. D. 314; *Re Franks* [1892], 1 Q. B. 647.

(h) *Swan's Case*, 10 Eq. 675.

(i) *Fricker's Case*, 13 Eq. 178.

(k) *Pugh and Sharman's Case*, 13 Eq. 566.

(l) *English Joint Stock Bank*, 3 Eq. 203.

(m) *Financial Ins. Co.*, 36 L. J.

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Brokers (a); managers, secretaries, &c., of banks, and clerks (b).

Liquidators, or voluntary liquidators, by contributories, or alleged contributories, or by creditors, and production of the company's books for inspection may be compelled (c).

The shareholders of a company against whom the liquidators of another company were unable to realize a judgment (d).

But a mere creditor of a company is not within the scope of s. 115, and cannot be examined under it (e).

In some cases the order will be made without prejudice to any objection the witness may think proper to take on attending the summons (f).

Although an order for examination under s. 115 is an *ex parte* one, and is not generally subject to appeal, a witness has yet a right to bring the matter before the judge personally by a motion to discharge (g).

The Court of Appeal will not interfere with the discretion of the judge in summoning persons (h), except under very special circumstances, as where there is a mistake in the principle upon which his decision was given (i). It is not clear whether the witness summoned to attend for examination has a *locus standi* to appeal against the order, except where there is a want of jurisdiction to issue the summons, or make the order (k); but it seems that he has in a case of oppression, or abuse of the process of the Court (l).

How the application is to be made.—The liquidator applies *ex parte* (m), and, as a general rule, he makes no affidavit,

Ch. 687; *Trower and Lawson's Case*, 14 Eq. 8 (a partner); *Mercantile Credit Assoc., Clement's Case*, 13 Eq. 179, n.

(a) *Clement's Case*, *supra*; *Exp. Carver*, *supra*; *Ex p. Carter*, 40 L. J. Ch. 15; *Mexican and South American Co., Ex p. Aston*, 27 Beav. 474.

(b) *Druitt's Case*, 14 Eq. 6; *s. c. nom. Forbes's Case*, 41 L. J. Ch. 467; *Smith, Knight, & Co.*, 4 Ch. 421; *Bloxam's Case*, 36 L. J. Ch. 687.

(c) *Barned's Banking Co.*, 2 Ch. 350; *Gooch's Case*, 7 Ch. 207. See *Sir John Moore Mining Co.*, 37 L. T. 242.

(d) *Contract Corp.*, 6 Ch. 145.

(e) *Accidental and Marine Ins. Corp., Mercati's Case*, 5 Eq. 22.

But see *Tyne Chemical Co.*, 43 L. J. Ch. 354, where there is an alleged counter-claim by the company.

(f) *Contract Corp.*, *supra*; *Smith, Knight, & Co.*, *supra*.

(g) *London and Lancashire Paper Mills Co. (No. 2)*, *Scott's Case*, 57 L. J. Ch. 766.

(h) *Gold Co.*, 12 Ch. D. 77.

(i) *Ib.*, *Heiron's Case*, 15 Ch. D. 139.

(k) See *North Australian Territory Co.*, 45 Ch. D. 87; *Whitworth's Case*, 19 Ch. D. 118; *Scott's Case*, *supra*.

(l) *Gold Co.*, *supra*; *Heiron's Case*, *supra*; *North Australian Territory Co.*, *supra*.

(m) *Fricker's Case*, 13 Eq. 178.

because it is not desirable to put anything on the file which can be inspected by the person against whom it is intended to proceed, and thus enable him to defeat the object of the proceeding (a).

A voluntary liquidator applies by motion under s. 138 for liberty to issue a summons under s. 115 (b).

A contributory can also apply, whether under a compulsory or a voluntary winding-up (c), but he must give notice to the liquidator. A contributory also files no evidence (d), though the liquidator may require him to do so (e). If, when the liquidator gets the notice, he informs the Court that he is about to institute proceedings, the Court will not interfere with him, because it is the better and the usual course to entrust the examination to the liquidator, as he is under the control of the Court, and represents the whole company, creditors and contributories. But if he refuses to take up the case, the Court may authorize the contributory who applies (f). When committing an examination to some creditor or contributory, the judge points out the extent and limits of that examination; and an order may be made although there is no ground for removing the liquidator. A person contending that another person's name should be put on the list can obtain the benefit of this section (g).

Securing attendance.—*The proper mode of obtaining the attendance of a person for examination under ss. 115 and 117 is by summons, and not by subpœna (h). So, also, as to obtaining the production, under s. 115, before an examiner in the liquidation, of any books or documents relating to the company in the custody or power of any officer or person (i). An appointment should be obtained in order to procure the issue of the summons, which will be issued by the registrar if the circumstances are such as to require it.*

(a) *Gold Co.*, 12 Ch. D. 77, 83.

(b) *Mercantile Discount Co.*, W. N. 1866, p. 21.

(c) *Penysyflog Iron Co.*, 30 L. T. 861.

(d) *Whitworth's Case*, *supra*, per Jessel, M.R., at p. 20.

(e) *Per Chitty, J.*, *Imperial Continental Water Co.*, 33 Ch. D., at p. 317.

(f) *Ib.*, *Whitworth's Case*, 19 Ch. D. 118, 120, *per* Jessel, M.R. See *Penysyflog Iron Co.*, 30 L. T. 861, as to applications by persons

not under the control of the Court.

(g) *Overend, Gurney, & Co.*, *Ex p. Musgrave*, 16 L. T. 378.

(h) *Re Westmoreland Green and Blue Slate Co.* (1892), W. N. 2; 66 L. T. 52; *English Joint Stock Bank*, 3 Eq. 203; *Gold Co.*, 12 Ch. D. 77, 82; *Credit Co. v. Webster*, *infra*. See form of summons, p. 575.

(i) *Credit Co. v. Webster*, 53 L. T. 419. See *infra* as to documents.

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No special authority from the judge is required before the registrar issues the summons (a).

The witness is bound to attend to be examined after reasonable notice, and the forty-eight hours' notice formerly required by the 22nd General Order of the 5th February, 1861, does not apply to such a witness (b).

The section provides that a reasonable sum for expenses must be tendered.

If any person, after being summoned and tendered the expenses above referred to, refuse to attend, without any lawful impediment allowed by the Court, the Court may cause such person to be apprehended, and brought before it for examination. And witnesses summoned under s. 115, and refusing to attend, may be made to pay the costs of compelling their attendance (c). Where a subpoena was issued instead of a summons the motion was dismissed with costs (d).

A witness refusing to answer may be committed for contempt (e). But it has been held in bankruptcy that a member of Parliament then in session is privileged from arrest (f).

It seems, as under the former practice, that the motion for committal should be supported by an affidavit of due service of a subpoena and notice to attend (g).

What questions must be answered.—A witness must give all the information in his power likely to assist the liquidator, and cannot refuse to answer questions because the information sought to be elicited would be hearsay evidence (h). Lord Justice Baggallay (i) has said that

(a) *Nowgong Tea Co.*, 16 L. T. 47.

(b) *North Wheal Eremouth Mining Co.*, 31 Beav. 628. See now R. S. C. 1883, O. 37.

(c) As to notice of motion, see *Trower and Lawson's Case*, 14 Eq. 8; *Lisbon Steam Tramways Co.*, 2 Ch. D. 575; *Silkstone and Dodworth Coal Co.*, 19 Ch. D. 118. As to a witness in Scotland summoned under s. 127, see *Re Tyne Chemical Co.*, 43 L. J. Ch. 354.

(d) *Westmoreland Green and Blue Slate Co.*, 66 L. T. 52; W. N. (1892), p. 2.

(e) *Ex p. Fernandez*, 30 L. J. C. P. 320; *Stone's Case*, 3 De G. & S. 120.

(f) *Re Armstrong* [1892], 1 Q. B. 327.

(g) See Daniel, 643-4; Daniel's Forms, 1014.

(h) *Ottoman Co.*, 15 W. R. 1069. See *Financial Ins. Co.*, 36 L. J. Ch. 687. As to a stockbroker being bound to discover the names of persons for whom he had purchased shares, see *Mexican and South American Co., Ex p. Aston*, 27 Beav. 474.

(i) *Whitworth's Case*, 19 Ch. D. 118, 121. As to answer tending to criminate, see *Ex p. Reynolds*, 20 Ch. D. 294. See *Ex p. Tilly*, 20 Q. B. D. 518; *Ex p. Webber, Re London Gas Meter Co.*, 20 W. R. 394.

the only matters as to which the witness can refuse to answer are matters in which he may incriminate himself, and matters involving professional confidence. If the question involves disclosure of matters with which the litigant parties have nothing to do, he may appeal to the judge to release him from answering the question, but the decision of the judge ought to be final and not subject to appeal.

And where a contributory who had executed a composition deed was summoned by the liquidator for examination, and was asked, "Did you not promise some of your creditors something beyond the composition as an inducement to execute the deed?" it was held, that he was not entitled to demur to the question, on the ground that the Bankruptcy Court had exclusive jurisdiction (a).

Shorthand note.—The Court or the officer before whom the examination is directed to be held may appoint a person to take a shorthand note of the proceedings (b).

Filing and inspection of depositions.—It has recently been held that in a winding-up by the Court, every contributory, and every creditor, whose claim or proof has been admitted, is entitled as of right to inspect and take copies of all depositions of evidence taken at a private examination under s. 115, whether the evidence was given by himself or by other persons (c). The effect of the decision has been nullified by a rule issued in November, 1895 (d). *Re Standard Gold Co.* was a decision on the C. W. Rules of April, 1892, Nos. 11 and 32. Those rules do not apply to a winding-up voluntarily or under supervision, in which case rule 58 of the General Order of 1862 applies, on which it has been held that such depositions need not be placed on the file (e) and cannot be inspected. Persons who are neither creditors nor contributories cannot inspect the depositions (f). It has been held in bankruptcy that depositions taken under the similar section of the Bankruptcy Act, 1883 (s. 27), are entitled to privilege in a subsequent action by the trustee in bankruptcy (g).

The examination takes place in the presence of the

(a) *Ex p. Webber*, *supra*.

(b) See C. W. U. R. 1890, r. 16, *post*, p. 317, which applies to any examination under the Companies Acts, 1862 to 1890.

(c) *Standard Gold Mining Co.* [1895], 2 Ch. 545.

(d) See *post*, Part II., p. 374.

(e) *London and Lancashire Paper Mills Co.* (2), *Scott's Case*, 57 L. J. Ch. 766.

(f) *North Australian Territory Co. v. Goldsborough, Mort, & Co.* [1893], 2 Ch. 381.

(g) *Learoyd v. Halifax Joint Stock Bank* [1892], 1 Ch. 686.

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parties, their counsel, solicitors, or agents, and the witnesses are subject to cross-examination and re-examination. The solicitor and counsel may protect the witness, and advise him whether or not he is bound to answer, and also probably draw his attention to any statement in the course of the examination as to which explanation may be desirable, or to different portions of the evidence, actually given, for the purpose of making the evidence, upon the whole and taken altogether, a fair and proper representation of his evidence on the matters as to which he is examined (a).

With the object of assisting the witness, his counsel and solicitor, in the re-examination, they are at liberty to take and, for that purpose only, carry away **notes of the examination** (b). They should be destroyed afterwards (b). The liquidator is entitled to have his clerk present to assist him with information as to the accounts, and his solicitor's clerk to take notes for purposes of cross-examination (c). These notes should be destroyed afterwards.

Any person described in s. 115 may be compelled to **produce any documents** in his custody or power relating to the company. But this power of compelling the production of documents only extends to such documents as may be required to be produced consistently with established rules (d). The Court will not make an order *ex parte* for the delivery of documents to the liquidator by the manager of a company (e). The production of documents is without prejudice to any lien (as to which the Court has jurisdiction to determine all questions); and the company's solicitors are compellable by summons under s. 115 to produce documents relating to the company in their possession, notwithstanding a lien for costs (f).

The office of the examiner is **not a public court**, and the public cannot be admitted if objected to (g).

(a) *Cambrian Mining Co.*, 20 Ch. D. 376, 378. See also *Breech-loading Armoury Co.*, *Re Merchants' Co.*, 4 Eq. 453.

(b) *Ib.* See *Heseltine & Son*, W. N. 1891, p. 25.

(c) *Heseltine & Son*, W. N. 1891, p. 25.

(d) See *supra*, as to securing attendance and production of documents. See R. S. C. 1883, O. 37, r. 7, as to order for attendance of person to produce documents; *Central News Co. v. Eastern Telegraph Co.*, W. N. 1884, p. 23.

(e) *Commercial Union Wine Co.*, 35 Beav. 35.

(f) *Ex p. Paine and Layton*, 4 Ch. 215; *Cameron's Coalbrook Ry. Co.*, 25 Beav. 1. But see *Potter's Case*, 1 De G. & S. 728. See *Ex p. Pulbrook*, L. R. 4 Ch. 627, as to the liquidator's solicitor.

(g) *Western of Canada Oil, &c., Co.*, 6 Ch. D. 109 (a confidential clerk of firm principally concerned in transaction under inquiry); *Greys Brewery Co.*, *infra*. But see *Heseltine & Son*, W. N. 1891, p. 25 (clerk to liquidator). Cf. *Wright v.*

Examinations under s. 115 are intended for the information of the liquidator, and it is a **contempt of Court** to publish prematurely the proceedings thereon (*a*).

Admitted creditors of a company in course of winding-up have not a general right, under r. 60 of the G. O. 1862, or C. W. U. R. 1890, r. 173, to attend an examination under s. 115, but the Court in its discretion may allow the attendance (*b*). So, a person who has made a claim as a creditor, and has liberty to attend, has no right to be present at an examination of a former officer of the company with a view to obtaining information as to the circumstances under which his claim arose (*c*).

Contributories have been allowed to attend, at their own expense, and to examine and cross-examine persons examined by the liquidator (*d*).

Any person wilfully and corruptly giving false evidence is liable to the penalties of **wilful perjury** (*e*).

Use of depositions as evidence.—It is settled that the information obtained by a liquidator or a contributory, under s. 115, is mere information obtained for his guidance and for the guidance of the Court in considering what is to be done. It is not evidence, and it cannot be made evidence against another party, and it can only be made evidence against the person who is examined if he is made a witness, and if he is challenged with it, and it is put in as an admission by him (*f*). There is no more reason why depositions obtained in this way should be submitted to the shareholders of the company generally than there is that any other information obtained by the liquidator should be shewn to them. If the depositions taken under s. 115 are to be used as evidence against the deponent (*g*), notice should be given. Depositions taken under s. 115 by the liquidator are not admissible in evidence against persons in whose absence they have been

Wilkin, 24 W. R. 643. As to shorthand writer, see *Wright v. Wilkin*, *supra*; *Ex p. Curzon*, 6 W. R. 141.

(*a*) *American Exchange in Europe*, 58 L. J. Ch. 706.

(*b*) *Greys Brewery Co.*, 25 Ch. D. 400. See also *Empire Assce. Corp.*, 17 L. T. 488; *Merchants' Co.*, 4 Eq. 454. *Cf. Brampton, &c., Ry. Co.*, 11 Eq. 428.

(*c*) *Norwich Equitable Insce. Co.*, 27 Ch. D. 515. But *cf. Empire Ass. Corp.*, 17 L. T. 488, as to

leave to attend and cross-examine.

(*d*) *Whitworth's Case*, 19 Ch. D. 118; *Brampton, &c., Ry. Co.*, *supra*.

(*e*) S. 169 of 1862 Act.

(*f*) See *North Australian Territory Co. v. Goldsborough, Mort, & Co.* [1893], 2 Ch. 381.

(*g*) *Pugh and Sharman's Case*, 13 Eq. 566; *Ex p. Hall, Re Cooper*, 19 Ch. D. 580; *R. v. Coote*, L. R. 4 P. C. 599. See *Lisbon Steam Tramway Co.*, 2 Ch. D. 575.

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taken, even though such persons have obtained an order requiring the liquidator to specify the depositions or parts of depositions on which he intends to rely against them, and he has accordingly specified the depositions which he desires to use (a).

The depositions might be made evidence by being embodied in an affidavit, or by examining in the presence of the opposite party the person who has made them (b).

(a) *Great Western (Forest of Dean) Coal, &c., Co.*, 54 L. J. Ch. 27 Ch. D. at p. 521.
506, p. 37.

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MISFEASANCE OR FRAUD OF DIRECTORS AND OFFICERS, &c.

Power to investigate conduct.
 Bribes and gifts of shares, &c.
 Promoter.
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Power to investigate conduct.—The power of the Court to assess damages against delinquent directors and officers was formerly regulated by s. 165 of the Act of 1862, whether the winding-up of any company was compulsorily, under supervision, or, upon an application under s. 138 (a), voluntarily (b). That section is now repealed by the Act of 1890, and s. 10 of the last-mentioned Act is substituted. Where, now, in the course of the winding-up of a company under the Companies Acts it appears that any person who has taken part in the formation or promotion of the company, or any past or present director, manager, liquidator, or other officer (at the time when the misfeasance complained of was committed (c)) of the company, has misapplied or retained or become liable or accountable for any moneys or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the Court may, *on the application of the Official Receiver, or of the liquidator (d) of the company, or of any creditor (e) or contributory (f) of the company*, examine into the conduct of such promoter, director, manager, liquidator, or other

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(a) *Bank of Gibraltar and Malta*,
 1 Ch. 69.

(b) *Rance's Case*, 6 Ch. 104.

(c) *McKay's Case*, 2 Ch. D. 1.

(d) See *National Funds Ass.*
Co., 10 Ch. D. 118, as to his right
 to apply; *British Guardian Co.*,
 14 Ch. D. 335, *infra*.

(e) A policy-holder is a creditor,
British Guardian Co., *supra*. As

to what transactions the company
 or a creditor cannot attack, see
Dronfield, &c., *Coal Co.*, 17 Ch. D.
 76, 97, but as to *ultra vires* trans-
 action which the liquidator can
 attack, see *Exchange Banking Co.*,
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(f) Not a bankrupt, *Cape Breton*
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officer of the company, and compel him to repay any moneys or restore any property so misapplied or retained, or for which he has become liable or accountable, together with interest after such rate as the Court thinks just, or to contribute such sums of money to the assets of the company by way of compensation in respect of such misapplication, retainer, misfeasance, or breach of trust as the Court thinks just (a). The provisions of this section apply in the winding-up of any company under the Companies Acts whether the same is being wound up by, or subject to the supervision of, the Court, or is being wound up voluntarily, and *whether the winding-up commenced before or after the passing of the Act of 1890*, and notwithstanding that the offence is one for which the offender may be criminally responsible (a). The above section is substantially the same as s. 165 of the Act of 1862, but it extends the provisions of s. 165 to persons taking part in the formation or promotion of any company; and it also includes "property" as well as "moneys." A creditor may be joined with the liquidator in the application, if any objection is taken on the ground that the claim is not one which the company itself might have enforced if it were not in course of liquidation (b). It does not, however, appear to be necessary that the claim should be of this description.

It seems that a fully paid-up shareholder cannot make the application, as a contributory (c), under the section, for an applicant must shew that the breach of duty has resulted in loss to the assets of the company, and that he has a direct pecuniary interest in the success of the application.

A summons under s. 10 cannot be served out of the jurisdiction (d).

The secretary of the company is within this section (e); a person who acts *de facto* as an officer cannot escape liability on the ground that he was not properly appointed (f).

This summary jurisdiction cannot be exercised against

(a) S. 10 of the Act of 1890.

(b) *British Guardian Co.*, *supra*, *National Funds Ass. Co.*, *supra* (summons amended by joining creditor).

(c) *Cavendish-Bentinck v. Fenn*, 12 App. Cas. 652.

(d) *Re Cliff, Edwards v. Brown* [1895], 2 Ch. 21; *Anglo-African*

Steamship Co., 32 Ch. D. 348; *Re Busfield*, 32 Ch. D. 123; *Nathan, Newman, & Co.*, 35 Ch. D. 1.

(e) *McKay's Case*, *supra*; *Mutual Aid, &c., Building Soc.*, 49 L. T. 530; *Stapleford Colliery Co.*, 42 L. T. 12.

(f) *Coventry and Dixon's Case*, 14 Ch. D. 660.

the **executors** of a deceased director or officer (a). Nor is a **banker** within it (b); nor a **solicitor** who acts for a company at the time of its formation *primâ facie* liable (c). But a solicitor to a building society was held liable where he was paid by salary, and he was practically in the position of financial manager of the society (d). And an application is maintainable against the **survivors** of a body of directors whose wrongful acts are complained of (e); and also against **trustees** in whose name part of the premiums on policies should have been invested (f). The **manager or auditor** of a company has been held liable in an action in respect of delusive balance sheets (g), and auditors appointed by a **banking company** pursuant to the Companies Act, 1879, s. 7, and spoken of as officers of the company in the articles of association, are "officers" within s. 10 (h). So also are auditors of any company where the articles of association, so far as they relate to the audit of its accounts, are in substance the same as the audit articles of Table A to the Companies Act, 1862 (i). But it seems that an auditor called in to make a particular audit for a company other than a banking company is not within the section (k).

Although it is not the duty of auditors to consider whether the company's business is prudently or imprudently conducted, it is their duty to consider and report to the shareholders whether the balance sheet exhibits a correct view of the state of the company's affairs and the true financial position of the company at the time of the audit. They must ascertain this by examining the books of the company, and must take reasonable care that what they certify as the company's position is true. And except in very special cases it is their duty to place before the shareholders the necessary information as to the true

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(a) *Feltom's Executor's Case*, 1 Eq. 219; *British Guardian Co.*, 14 Ch. D. 335; but as to their liability to an action, see *Ramskill v. Edwards*, 31 Ch. D. 100; *Leeds Estate Co. v. Shepherd*, cited *infra*.
(b) *Re National Bank*, 10 Eq. 298.

(c) *Great Wheal Polgooth*, 53 L. J. Ch. 42; *Great Western Forest of Dean Coal Co.*, *Carter's Case*, 31 Ch. D. 896.

(d) *Liberator Building Soc.*, 71 L. T. 406.

(e) *British Guardian Co.*, *supra*.

E.W.

(f) *British Guardian Co.*, W. N. 1880, p. 63. As to s. 38 of the Act of 1867, see *Cornell v. Hay*, L. R. 8 C. P. 328.

(g) *Leeds Estate Building and Investment Co. v. Shepherd*, 36 Ch. D. 787. See this case as to the duty of an auditor of a company.

(h) *Re London and General Bank* [1895], 2 Ch. 166.

(i) *Kingston Cotton Mills* [1896], 1 Ch. 6.

(k) *Re London and General Bank*, *supra*.

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financial position of the company, and not merely to indicate the means of acquiring it (*a*). Where an auditor presented a confidential report to the directors, calling their attention to the insufficiency of the securities on which the capital of the company was invested, and the difficulty of realizing them, but in his report to the shareholders merely stated that the value of the assets was dependent on realization, and in the result the shareholders were deceived as to the condition of the company, and a dividend was declared out of capital and not out of income, the auditor was held liable to make good the amount of the dividend paid (*a*). For a comparison between the position of a director and an ordinary trustee, see the case below (*b*).

The Court is now in favour of a wide construction of this power (*c*); but the section does not create any new liability or any new right, and only provides a summary mode of enforcing rights which must otherwise have been enforced by the ordinary procedure of the Courts (*d*).

The liquidator or applicant must shew something which would have been the ground of an action by the company if it had not been wound up; that is to say, breach of trust or misfeasance in the nature of breach of trust (*e*); and there must be some act resulting in actual loss to the company (*f*); and a direct pecuniary interest in the success of the application (*g*). The summary process is not limited to acts partaking of a criminal character, but applies to every case in which misfeasance by the directors can be established. Where the alleged misfeasance consists of an act which is not *ultra vires*, and not fraudulent or dishonest, the directors are not liable unless it can be shewn that they did not really exercise their discretion and judgment as such directors, and that the

(*a*) *London and General Bank* (2) [1895], 2 Ch. 673.

(*b*) *Faure Electric Accumulator Co.*, 40 Ch. D. 141.

(*c*) *Stringer's Case*, 4 Ch. 475. See *Alexandra Palace Co.*, 21 Ch. D. 149, where dividends were paid out of capital. See the old cases, *Bank of Gibraltar and Malta*, *supra*; *Royal Hotel of Great Yarmouth*, 4 Eq. 244.

(*d*) *Coventry and Dixon's Case*, 14 Ch. D. 660; *Cape Breton Co.*, 29 Ch. D. 795; affirmed in *Cavendish-Bentinck v. Feun*, 12 App.

Cas. 652; *Exchange Banking Co.*, *supra*; *Forest of Dean Coal Co.*, *infra*. See *Ladywell Mining Co. v. Brookes & Huggons*, 35 Ch. D. 400. As to advances by a loan society alleged to be *ultra vires*, see *Grimwade v. Mutual Soc.*, 52 L. T. 409.

(*e*) *Coventry and Dixon's Case*, *supra*. See *Ambrose Lake Tin Co.*, 14 Ch. D. 390; *British Seamless Box Co.*, 17 Ch. D. 467.

(*f*) *Ib.*

(*g*) *Cavendish-Bentinck v. Feun*, *supra*.

omission to do so resulted in loss or damage to the company (*a*). Mere **non-feasance** is not within the scope of the 10th section of the Act of 1890 (*b*). But misfeasance includes such non-feasance as is negligence amounting to a breach of trust (*c*). The Court, however, will not allow the liquidator to make an unfair use of the power (*d*).

The application should be made within a reasonable time, or otherwise it may be treated as a stale demand (*e*). The liquidator frequently before commencing proceedings for misfeasance, examines the person proposed to be made liable, as described in the last chapter, under s. 115. Unless a special case is shewn, applications of this nature must be heard as applications on affidavit evidence (*f*). Whether the misfeasance be non-disclosure or not, the *onus* of proving the case is on the applicant. Where rescission is claimed, if it is shewn that a person taking part in the transaction of purchase was himself one of the vendors, the *onus* would be on him of shewing that he made full disclosure. But when an applicant seeks to establish a case of misfeasance, it is necessary for him to give evidence of all the elements that go to make up that misfeasance (*g*).

The Court can, in a proper case, order the liquidator to give **security for costs** on an application under this section, as, for instance, when delay and inability of the company to pay the costs are shewn (*h*).

The following are **other examples** as to when this summary jurisdiction will be exercised:—

Persons acting as directors without qualification cannot be made liable without shewing some damage to the company (*i*).

A director has been ordered to repay a dividend declared

(*a*) *New Mashonaland Exploration Co.* [1892], 3 Ch. 577; *Liverpool Household Stores*, 62 L. T. 873.

(*b*) *Wedgwood Coal Co.*, 31 W. R. 181; *Forest of Dean Coal Co.*, 10 Ch. D. 450.

(*c*) *Liverpool Household Stores Assoc.*, *supra*.

(*d*) *Forest of Dean Coal Co.*, 10 Ch. D. 450. See *Perry's Case*, 34 L. T. 716.

(*e*) *Alexandra Palace Co.*, 21 Ch. D. 149; *London Financial Assoc. v. Kelk*, 26 Ch. D. 107. But *cf. Mammoth Copperopolis of Utah*,

50 L. J. Ch. 11; 43 L. T. 754. See *infra*, p. 220, as to the Statute of Limitations.

(*f*) *Faure Electric Accumulator Co.*, 58 L. T. 42.

(*g*) *Cavendish-Bentinck v. Fenn*, *supra*. As to evidence of non-disclosure, see too *Archer's Case* [1892], 1 Ch. 332.

(*h*) *Seventh East Central Building Soc.*, 51 L. T. 109. But see this case *post*, p. 256. *Cf. Pooley v. Whetham*, 28 Ch. D. 38; and *Cowell v. Taylor*, 31 Ch. D. 34.

(*i*) *Coventry's Case*, *supra*.

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and paid under a fraudulent and delusive balance-sheet (*a*). But an innocent director is not liable for the fraud of his co-directors in issuing to the shareholders false and fraudulent reports and balance-sheets, if the books and accounts of the company have been kept and audited by duly appointed and responsible officers, and he has no ground for suspecting fraud. Consequently, if such a director has received, together with the other shareholders, dividends declared and paid in pursuance of such reports and balance-sheets, such dividends having been, in fact, payments out of capital, he cannot be called upon, under s. 10 of the Act of 1890, to repay the dividends so paid, nor even the dividends received by himself (*b*).

A director is not bound to examine entries in any of the company's books; nor is the doctrine of constructive notice to be so extended as to impute to him a knowledge of the contents of the books (*c*). But where the directors fall short of the standard of care which they ought to apply to the affairs of the company, the *onus* is upon them to shew that dividends have been paid out of profits (*d*).

Directors have been compelled to refund **dividends** improperly paid to shareholders **out of capital**, upon the application of the liquidator (*e*), and the fact that the capital improperly applied has been distributed *pro ratâ* among the whole body of shareholders will not protect the directors (*e*);

(*a*) *Stringer's Case*, *supra*. See also *Rance's Case*, 6 Ch. 104; *Leeds Estate Building, &c., Co. v. Shepherd*, *supra*.

(*b*) *Denham & Co.* (No. 1), 25 Ch. D. 752. See *Grimwade v. Mutual Soc.*, 52 L. T. 409, as to non-liability for errors of actuaries and accountants, and *Perry's Case*, *supra*, as to misfeasance of co-directors without knowledge of directors against whom a claim is made. See *Mutual Aid, &c., Building Soc.*, 49 L. T. 530, as to a secretary's liability for misfeasance of clerk.

(*c*) See note (*b*), *supra*.

(*d*) *Leeds Estate Building and Investment Co. v. Shepherd*, 36 Ch. D. 787.

(*e*) *National Funds Ass. Co.*, 10 Ch. D. 118, where a creditor was joined to obviate any question: *Oxford Building, &c., Soc.*, 35 Ch. D. 502, where the summons was by a

creditor, and the order was made without prejudice to the right to recover from shareholders. See this case as to the Act giving new rights after the winding-up, which are enforceable where the company could not have recovered. See also and consider *Exchange Banking Co.*, 21 Ch. D. 519 (joint and several liability); *Alexandra Palace Co.*, *supra*; *Denham & Co.* (No. 1), *supra*, an application by creditors. *Leeds Estate Building and Investment Co. v. Shepherd*, *supra*, an action by a company in liquidation. As to an express power, also, in the company's articles, see *Guinness v. Land Corp. of Ireland*, 22 Ch. D. 349. As to wasting property or wear and tear, and not providing a sinking fund, see *Lee v. Neuchatel Asphalte Co.*, 41 Ch. D. 1; *Kehoe v. Waterford and Limerick Railway Co.*, 21 L. R. Ir. 221.

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the liability of the directors is joint and several for the whole amount misapplied, with a right to recover from the shareholders (*a*), but the estate of a deceased director is only liable for so much as the deceased director himself received (*b*); to pay calls made on shares improperly allotted to infant children (*c*); to pay funds misappropriated and paid to a promoter of the company (*d*); to repay the value of shares received as a present for placing shares (*e*); directors' fees or remuneration improperly paid (*f*) and sums paid nominally for preliminary expenses, but in fact for fraudulently raising the price of the company's shares in the market (*g*). So they have been made liable for loss by making unauthorized advances (*h*); but the director must be shewn to have taken an active part in the investment; mere presence at a meeting at which the minutes of the meeting at which the advance was made are read and confirmed, is not sufficient (*i*); for **gross negligence** where there has been *crassa negligentia*, amounting to fraud (*k*); for, it seems, a transaction amounting to a fraudulent preference (*l*); for all cases amounting to a **breach of trust** (*m*); for improper profits (*n*); for misappropriating the company's money for private speculations (*o*); for payment of the company's moneys for

(*a*) *Oxford Benefit Building Society, supra*; *National Funds Ass. Co., supra*.

(*b*) *Re Kennard*, 11 T. L. R. 283.

(*c*) *Ex p. Wilson, Crenver, &c., Mining Co.*, 8 Ch. 45.

(*d*) *Anglo-French Co-operative Soc.*, 21 Ch. D. 492.

(*e*) *Fitzroy Bessemer Steel, &c., Co.*, 50 L. T. 144. But see on appeal (33 W. R. 312), a compromise was made on payment of a fixed sum by the appellant. See this case as to the amount payable on valueless shares.

(*f*) *Public Supply Assoc.*, W. N. 1880, p. 106; *Hunt's Case*, 37 L. J. Ch. 278; *Oxford Building, &c., Soc.*, *supra*; *Whitehall Court, Ltd.*, 56 L. T. 280.

(*g*) *Railway Light Improvement Co.*, 28 W. R. 541.

(*h*) *Lands Allotment Co.* [1894], 1 Ch. 616; *Caledonian Heritable Security Co. v. Curror's Trustee*, 9 C. of S. Cas. 1115 (Sc.).

(*i*) *Lands Allotment Co.*, *supra*.

(*k*) *Overend, Gurney, & Co. v.*

Gurney, L. R. 5 H. L. 480; but as to *crassa negligentia*, see *per* Vaughan Williams, J., *New Mashonaland Co.* [1892], 3 Ch. 583. "*Crassa negligentia* is a term to be got rid of;" *Railway Light Improvement Co.*, *supra*; *Perry's Case*, 34 L. T. 716. See *Turquand v. Marshall*, 4 Ch. 376.

(*l*) *Liverpool and London Guarantee Insee. Co.*, 46 L. T. 54; 30 W. R. 378, where set-off by directors held not to be misfeasance. See *Wood's Ship's Woodite, &c., Co.*, 60 L. T. 760; *Poole, Jackson, & Whyte's Case*, 9 Ch. D. 322.

(*m*) *Stringer's Case*, 4 Ch. 475, and cases in judgment, *De Ruviigne's Case*, 5 Ch. 118; *Ormerod's Case*, 25 W. R. 765; *British Guardian Co.*, 14 Ch. D. 335; *Scholefield's Case*, *infra*.

(*n*) *Compagnie - Générale de Bellegarde*, 4 Ch. D. 470, where the issue of debentures at a discount was held not to be illegal.

(*o*) *Shipman's Case*, 4 Ch. 480, *n.*

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clearly improper purposes (*a*); and for sums received as commission on sales and purchases (*b*). So also trustees and managers of a savings bank, for frauds of an actuary which could not have been committed if the provisions of the Savings Bank Act, 1863, and the auditing of accounts had been properly observed by them (*c*). Payment of **brokerage** to a stockbroker in the ordinary course of business is not illegal (*d*); but it must be in the ordinary course of business (*e*).

Where directors apply money for purposes so beyond its powers that the company could not sanction such application, they may be made personally liable as for a breach of trust; but if they apply the money in a manner which is **not ultra vires**, then a strong and clear case of misfeasance must be made out to render them liable for a loss (*f*).

Orders will be made, on the application of the liquidator, where the directors have misrepresented to policy-holders or have failed to perform a guarantee, that a certain part of the premiums shall be set apart and invested in a certain manner (*g*). And the directors are not discharged in respect to lapsed policies (*h*). A director may be made liable for a breach of trust although he has not participated in any moneys arising from such breach (*g*).

When the rescission of a contract for the sale of property has become impossible, no relief can be given against a director charged with misfeasance by reason of the sale (*i*).

For if an agent for the purchase of property sells to his principal property of his own, but *acquired before the agency existed*, without disclosing his interest therein, the principal is entitled on discovery to set aside the purchase. But if

(*a*) *Imperial Land Co. of Marseilles*, 10 Eq. 298.

(*b*) *Oxford Building Society*, 35 C. D. 502. See *Municipal Perm. Invest. Soc. v. Richards* (No. 2), W. N. 1889, p. 103.

(*c*) *Cardiff Savings Bank, Davies' Case*, 45 Ch. D. 537; but see *contra But's Case* [1892], 2 Ch. 100.

(*d*) *Metropolitan Coal Consumers' Association v. Scrimgeour*, [1895], 2 Q. B. 604, dissenting from *Faure Electric Accumulator Co.*, 40 Ch. D. 141. See, too, *West of England Paper Mills Co. v. Gilbert*, 61 L. J. Ch. 92; and see *ante*, Chap. VIII., p. 132.

(*e*) *Ib.*

(*f*) *Faure Electric Accumulator Co.*, *supra*; *New Mashonaland Co.* [1882], 3 Ch. 577; *Lands Allotment Co.* [1894], 1 Ch. 616.

(*g*) *British Guardian Co.*, 14 Ch. D. 335, where a whole life policy-holder joined in the application. See *Ambrose Lake Tin Co.*, 14 Ch. D. 390. But see *Cavendish-Bentinck v. Fenn*, *infra*.

(*h*) *Scholefield's Case*, W. N. 1882, p. 22.

(*i*) *Cape Breton Co.*, 29 Ch. D. 795 (an application by a contributory), affirmed in *Cavendish-Bentinck v. Fenn*, 12 App. Cas. 652; but see *dicta* in that case. See *Ladywell Mining Co. v. Brookes & Huggons*, 35 Ch. D. 400.

the principal after discovery elects not to rescind, but to take advantage of his purchase, and he deals therewith in such a way as to render rescission impossible, he is not entitled to make the agent account to him for the profit he made by the sale, whether estimated by the difference between the purchasing and selling price of the property on the part of the agent, or the difference between the market value of the property, if this can be calculated, and the actual price at which the agent sold it to the principal (*a*). If when the agent acquired the property which he subsequently sells to the company, he was already in a fiduciary position to the company, the company has the alternative either to rescind or to retain the property, paying for it no more than the agent gave (*b*).

There is no misfeasance in a person who has an interest in the property, by being a shareholder in the company which is selling it, nevertheless acting as a director in the purchase of that property for another company, he having communicated to his co-directors the fact that he has such an interest (*c*).

A person nominated as director in violation of the articles without proper qualification, and accepting the nomination and acting as a director, has not thereby been guilty of misfeasance within this section (*d*). Nor is a director liable who takes no steps to recover promotion money improperly paid before he became a director, of which he was cognizant, though not a party thereto (*e*).

A transaction which may have been intended to deceive the public, but which is not a fraud on the shareholders, is not within the section (*f*).

For other instances of acts which will amount to misfeasance, see the cases below, where actions have been brought instead of proceeding under the 10th section (*g*).

The combined effect of s. 153 of the Act of 1862 and s. 10 of the Act of 1890 is to make directors *primâ facie*

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(*a*) See note (*i*), p. 214.

(*b*) *Bank of London v. Tyrrell*, 10 H. L. C. 26, 47; *Emma Mining Co. v. Grant*, 11 Ch. D. 938; *Ambrose Lake Co.*, 14 Ch. D. 390.

(*c*) *Cavendish-Bentinck v. Fenn*, 12 App. Cas. at p. 661, and *supra*.

(*d*) *Coventry and Dixon's Case*, 14 Ch. D. 660.

(*e*) *Forest of Dean Coal Mining Co.*, 10 Ch. D. 450; and see *Lands Allotment Co.* [1894], 1 Ch. 616.

(*f*) *Ambrose Lake Tin Co.*, 14

Ch. D. 390.

(*g*) *General Exchange Bank v. Homer*, 9 Eq. 480; *Madrid Bank v. Pelly*, 7 Eq. 442; *Joint Stock Discount Co. v. Brown*, 8 Eq. 381; *Imperial Mercantile Credit Ass. v. Coleman*, 6 Ch. 558; *Parker v. McKenna*, 10 Ch. 96; *Gray v. Lewis*, 8 Ch. 1035; *Albion Steel Co. v. Martin*, 1 Ch. D. 588; *Nant-y-Glo Ironworks Co. v. Grave*, 12 Ch. D. 738.

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liable for all moneys of the company, expended by them, not in the ordinary course of business, since the commencement of the winding-up (*a*).

When moneys of a company are misapplied by directors, an action can be brought against them in the name of the company (*b*), and it seems that such action may be maintained by any one shareholder on behalf of all (*c*), or on his own account alone (*d*).

Bribes and gifts of shares, &c.—It may, in the first place, be doubtful where a present of paid-up shares has been made to a director, whether he is liable as a contributory or as a misfeasant under the above-mentioned power. The test is, whether the person, who has accepted the bribe of paid-up shares, has ever *contracted* to take any shares from the company; if he has not, he cannot be made a contributory in respect of unpaid shares (*e*), but he may then be made liable for misfeasance within s. 10 of the Act of 1890 (*f*). There are numerous cases shewing that directors and officers will be made liable where they have accepted gifts, or bribes of money, or qualification shares, from promoters (*g*). And several directors may be held jointly and severally liable to pay the full value of shares (*h*). So, where the secretary of the company had received from the vendor of property under a secret agreement paid-up shares, he was held liable for their full nominal value (*i*).

So directors have been compelled by summary orders to make good a sum paid to a promoter for preliminary expenses, out of which the director's qualifications were provided (*k*); and money paid by an interested person in

(*a*) *Neath Harbour Smelting Works*, W. N. 1887, pp. 87, 121.

(*b*) See *Exchange Banking Co.* and *Oxford Benefit Building Soc.*, cited in this chapter.

(*c*) *Guinness v. Land Corp. of Ireland*, 22 Ch. D. 349.

(*d*) *Tomkinson v. South-Eastern Ry. Co.*, 35 Ch. D. 675.

(*e*) *Hay's Case*, 10 Ch. 593. See *Medical Attendance Assoc., Onslow's Case*, 57 L. J. Ch. 338; *Ex p. Daniell*, 1 De G. & J. 372.

(*f*) *Carling's Case*, 1 Ch. D. 115.

(*g*) *Hay's Case*, 10 Ch. 593; *Pearson's Case*, 5 Ch. D. 336; *Metcalf's Case*, 13 Ch. D. 169; *Fitzroy Bessemer Steel, &c., Co.*,

33 W. R. 312; *Carriage Co-operative Supply Assoc., Roberts' Case*, 27 Ch. D. 322; *Drum Slate Quarry Co.*, 55 L. J. Ch. 36. See also *De Ruvigne's Case*, 5 Ch. D. 306; *Weston's Case*, 10 Ch. D. 579; *Eden v. Ridsdale's Railway Lamp Co.*, 23 Q. B. D. 368. See *Ambrose Lake Tin Co.*, 14 Ch. D. 390, as to the mere conversion of cost-book company into joint stock company.

(*h*) *Hay's Case*, *supra*, *Carriage Co-operative Supply Assn., Roberts' Case*, *supra*.

(*i*) *McKay's Case*, 9 Ch. D. 1.

(*k*) *Englefield Colliery Co.*, 8 Ch. D. 388; *Anglo-French Co-operative Soc.*, 21 Ch. D. 492.

order to obtain a director's services as an officer of the company (a); and also secret promotion money (b).

The fact that the director receives the bribe after the purchase money has been paid to the vendor to the company of property does not relieve the director of his liability (c). In the absence of evidence to the contrary, a purchase of vendor's shares under the nominal value will be taken to have been made before the adoption of the agreement for sale (d).

A provision in the articles of association that gifts of shares, or payments of money, may be made to the directors by the promoters, is fraudulent (e).

It is clear that a director who has obtained a **gift of qualification shares** direct from a promoter cannot be settled on the list of contributories (f). But this does not relieve him from liability under s. 10 of the Act of 1890 (g). And if a director accepts shares from a promoter, it appears that he is liable for their market value, notwithstanding the agreement between the company and promoter may not be binding, or the fact that there is no clause as to qualification (h). And where the director entered into a secret agreement with the promoter that the promoter should on request purchase the director's qualification shares from the director at the price at which he acquired them, which was accordingly done when the director subsequently resigned, the director was held liable for whatever benefit accrued to him under the agreement (i). In the words of Bowen, L.J., the director is really a watch-dog, and the watch-dog has no right, without the knowledge of his master, to take a sop (k). See summary of cases, Chapter VIII.

A payment or bonus made or given to directors *bonâ fide* for the benefit of the company (l), or with the know-

(a) *Ormerod's Case*, 25 W. R. 765; 37 L. T. 244. See also *Pearson's Case*, 4 Ch. D. 222; *Hay's Case*, *supra* (*Orgill's Case*, 21 L. T. 221, there disapproved).

(b) *London and Provincial Starch Co.*, W. N. 1869, p. 98; *Anglo-French Co-operative Soc.*, *supra*; *Hunt's Case*, 37 L. J. Ch. 278.

(c) *Hay's Case*, 10 Ch. 593.

(d) *Weston's Case*, 10 Ch. D. 597.

(e) *Clarke & Helden's Case*, 37 L. T. 222. But as to where the application is to render liable as

contributory, see *Miller's Case*, 5 Ch. D. 70.

(f) *Brown's Case*, 9 Ch. 102; *Carling's Case*, 1 Ch. D. 115.

(g) *De Ruviné's Case*, 5 Ch. D. 306.

(h) *Pearson's Case*, 5 Ch. D. 336; *Carling's Case*, *supra*; *De Ruviné's Case*, *supra*; *McKay's Case*, 2 Ch. D. 1. See *infra* as to extent of liability.

(i) *Archer's Case* [1892], 1 Ch. 322.

(k) *Ib.* at p. 341.

(l) *Paraguassu Tramway Co.*, 18 Eq. 670.

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ledge and acquiescence of all the members, where it was intended to admit no other members (a), may be supported. But the directors cannot pay themselves for their services, or make presents to themselves out of the company's assets, unless authorized so to do by the instrument which regulates the company, or by the shareholders at a properly convened meeting (b).

Promoter.—It was held under s. 165 of the Act of 1862, that the summary jurisdiction could be put in force against a promoter who was, or had been, an officer of the company at the time of the misfeasance (c). But now any person who has taken part in the formation or promotion of the company is included within the provisions of s. 10 of the Act of 1890, which has been substituted for s. 165 of the Act of 1862. A debt due under s. 10 of the Act of 1890 from a promoter is incurred by "fraud," and also "breach of trust," within s. 30 (1) of the Bankruptcy Act, 1883, and accordingly the misfeasant is not released by his discharge (d).

A **solicitor** is not *prima facie* a "promoter" or "officer" of the company, and cannot, therefore, be made liable in that capacity under s. 10 of the Act of 1890 (e). But a solicitor to a building society has been held to be within the section where he was paid by salary and was practically financial manager of the society (f).

What must be accounted for.—Where there has been an acceptance of shares by directors in breach of trust, the liquidator may take whichever of the three following remedies is most beneficial to the company: (1) he may,

(a) *British Seamless Box Co.*, 17 Ch. D. 467; *Postage Stamp Automatic Co.* [1892], 3 Ch. 566.

(b) *George Newman & Co.* [1895], 1 Ch. 674.

(c) See *Hay's Case*, 10 Ch. 593; *New Sombrero Co. v. Erlanger*, 5 Ch. D. 73; 3 App. Cas. 1218; *Emma Silver Mining Co. v. Grant*, 11 Ch. D. 918; *Lydney and Wigpool Iron Co. v. Bird*, 33 Ch. D. 85; *Scottish Pacific Coast Mining Co. v. Falkner & Co.*, 15 C. of S. Cas. 290 (Sc.). See *Ladywell Mining Co. v. Brookes*, *ib. v. Huggons*, 35 Ch. D. 400. But see remarks in *Great Wheal Polgooth, infra*. As to presents for placing

shares, see *Fitzroy Bessemer Steel, &c., Co.*, 33 W. R. 312. See *ante*, p. 207, and see p. 112.

(d) *Emma Silver Mining Co. v. Grant*, 17 Ch. D. 122. *Semble*, this applies also to a director.

(e) *Great Wheal Polgooth*, W. N. 1883, p. 114; which see as to definition of "promoter," and p. 112, n. and p. 181; and see 53 & 54 Vict. c. 64, s. 3. *Great Western Forest of Dean Coal Co., Carter's Case*, 31 Ch. D. 496. See also summary of cases, p. 181, as to promoter.

(f) *Liberator Building Society*, 71 L. T. 406.

if the shares are valuable, have them transferred back; (2) if the directors have sold the shares at a profit, he may recover the entire profit; (3) or if there has been no profit, he may claim such sum as the company has lost by being deprived of the right of allotting the shares to other persons who would have paid them up (*a*).

The measure of damages in the last-mentioned remedy, will be the highest value when, or at any time after, the shares were transferred to the misfeasant (*b*); and the full nominal value will be charged, notwithstanding that some of the shares have been transferred by the misfeasant for a nominal consideration (*c*). A director has been held liable to account to the liquidator for the value of the shares, at the value at which they stood at the date he received the present, together with interest at 5 per cent. from the date of such gift (*d*). In another case, interest was not ordered, as no dividend had been paid on the shares (*e*). And in another interest at 5 per cent. from the date of the summons (*f*).

Interest has been ordered at 4 per cent. on sums paid as dividends and improperly declared out of capital, and on sums received improperly as remuneration by directors, and at 5 per cent. on sums received by directors as remuneration by way of commission on sales and purchases (*g*).

The misfeasant cannot set off any money due from the company against the damages due under s. 10 of the Act of 1890 (*h*).

But he may prevent this summary power being put in force against him by buying up the assets of the company; as the demand under s. 10 is a chose in action, which can

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(*a*) *Per Mellish, L.J., in Carling's Case*, 1 Ch. D. 115, 126.

(*b*) *McKay's Case*, 2 Ch. D. 1; *Weston's Case*, 10 Ch. D. 579. See *Fitzroy Bessemer Steel, &c., Co.*, 33 W. R. 312; *Postage Stamps Automatic Co.* [1892], 3 Ch. 566. As to the measure of damages where there has been an over-issue of debenture stock by directors, and generally as to warranty of authority to issue debentures, see *Firbank v. Humphreys*, 18 Q. B. D. 54; *Elkington v. Hürter* [1892], 2 Ch. 452.

(*c*) *Metcalf's Case*, 13 Ch. D. 169. See *De Ruigne's Case*, 5 Ch. D. 306; *Pearson's Case*, *ib.* 336.

(*d*) *Drum Slate Quarry Co.*, 55

L. J. Ch. 36; *Patent Furnace Co.*, 4 T. L. R. 152.

(*e*) *Fitzroy Bessemer Steel Co.*, *supra*.

(*f*) *Archer's Case* [1892], 1 Ch. 322.

(*g*) *Oxford Building, &c., Soc.*, 35 Ch. D. 502. See *Whitehall Court, Ltd.*, 56 L. T. 280, where 4 per cent. was charged; *Anglo-Indian and Colonial, &c., Inst.*, 4 T. L. R. 769, where 5 per cent. was charged.

(*h*) *Exchange Banking Co.*, 21 Ch. D. 519; *Anglo-French Co-operative Soc.*, 21 Ch. D. 492; *Milan Tramways Co.*, *infra*; *Carriage Co-operative Supply Assoc.*, *Roberts' Case*, 27 Ch. D. 322.

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be assigned by the liquidator, by virtue of the 95th section (a).

On the other hand, where, after the misfeasant has assigned debts due by a company, an order is made under s. 10 that the assignor should pay damages, such damages cannot be set off against dividends payable to the assignee, who was not aware of any claim against the assignor in respect of the debts (b). Rule 3 of Order 19, Rules of Court, 1883, does not affect the question of set-off (c).

Motion to commit.—If a director has been ordered to pay the full value of shares received by him from a promoter, and fails to do so, this will not make him a defaulting trustee within s. 4 (3) of the Debtors Act, 1860, and a motion to commit will be refused (d). Such a case is different from the wrongful application of money which has once belonged to the company (e). As to bankruptcy notice, see *post*, p. 225.

Statute of Limitations.—Prior to the Trustee Act, 1888 (f), a director who misapplied the funds of a company was so far a trustee that he could not plead the Old Statute of Limitations (g). So also the liability was held not to be terminated by death or bankruptcy (h). Now, however, directors of a company are within the Trustee Act, 1888, s. 8, and can therefore, in the absence of fraud, take advantage of the Statute of Limitations in proceedings against them for misapplication of the funds of the company (i). A further question which requires consideration is from what date the period should run, whether from the date of the misapplication, or of the winding-up order (k).

(a) *Park Gate Waggon Works Co.*, 17 Ch. D. 234. But see *New Westminster Brewery v. Hannah*, W. N. 1877, p. 35.

(b) *Ex p. Theys, Milan Tramways Co.*, 25 Ch. D. 587.

(c) *Ib.* Same as R. S. C. 1875.

(d) *Metcalfe's Case*, 13 Ch. D. 815.

(e) *Metcalfe's Case*, 13 Ch. D. 815, *per Malins, V.C.*, 820.

(f) 51 & 52 Vict. c. 59.

(g) *Oxford Benefit Building Soc.*, *supra*; *Exchange Banking Co.*, *supra*; *Metropolitan Bank v. Heiron*, 5 Ex. D. 319. See also *Poole, Jackson, & Whyte's Case*, 9 Ch. D. 322.

(h) *Ramskill v. Edwards*, 31 Ch. D. 100.

(i) *Lands Allotment Co.* [1894],

1 Ch. 616.

(k) The cases bearing upon the point whether the liquidator stands in the place of the company or has a new right on behalf of creditors under section 10, or by general law, must be considered. See *Leeds Estate, &c., Co. v. Shepherd*, 36 Ch. D. 787 (where auditor allowed to plead statute to bar liability for defaults made for six years before the issue of the writ); *Coventry and Dixon's Case*, 14 Ch. D. 660 (as to section 10 creating no new right); *Waterhouse v. Jamieson*, L. R. 2 H. L. 29; *Poole, Jackson, and Whyte's Case*, 9 Ch. D. 322; *Dronfield, &c., Coal Co.*, 17 Ch. D. 76; *Oxford Benefit Building Soc.*, *supra*.

It could hardly be maintained that on a summons under s. 10 time should run from the date of the winding-up order, unless the same rule was adopted in the case of an action against the executors of a deceased director (a). It would seem, although it is doubtful, that the time runs from the date of the misapplication.

The time at which the company discovers the fact that a bribe has been paid is an important matter when it is necessary to consider from what period the statute begins to run (b). Where more than six years elapsed since notice of misfeasance to directors who were more or less implicated in the arrangement in question, the liquidator's claim was held not to be barred by the statute, for though notice to the directors is *prima facie* notice to the company, it was considered not to be so in a case where it was certain that the directors would not communicate the information to the shareholders (c). This case, however, was compromised on appeal (d).

The dissolution of a company under s. 111 of the Companies Act, 1862, is a bar to an action against the directors for payment of dividends out of capital in the absence of any fraud being alleged (e).

Personal liability of directors, &c.—Although in cases of misrepresentation by the prospectus and the like, it may not be possible to make the company responsible for the frauds of its agents beyond the extent to which it has derived profit from them, yet the person defrauded may sustain an action for fraud against the directors personally. But the director or agent can only be made responsible for his own personal fraud, unless he has expressly or impliedly authorized the fraud of the other directors or agents (f).

In order to render the directors or other agents of the company personally liable, previous to the Directors Liability Act, 1890, there must be a material misrepresentation knowingly false, or made without belief in its

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(a) See as to an action being necessary against the executors of a deceased director, as above section cannot be put in force, *Feltom's Executor's Case*, cited in this chapter, *ante*, p. 209, and the other cases there referred to.

(b) *Metropolitan Bank v. Heiron*, 5 Ex. D. 319, 324. See *Cape Breton Co.*, 29 Ch. D. 795; *Ladywell Mining Co. v. Brookes and Huggons*, 35 Ch. D. 400.

(c) *Fitzroy Bessemer Steel, &c., Co.*, 50 L. T. 144; 32 W. R. 475, on appeal (33 W. R. 312).

(d) *Ib.*, per Baggallay, L.J., 33 W. R. 313.

(e) *Coxon v. Gorst* [1891], 2 Ch. 73.

(f) *Weir v. Bell*, 3 Ex. D. 32, 238. See 53 & 54 Vict. c. 64; *Henderson v. Lacon*, 5 Eq. 249; *Cargill v. Bower*, 10 Ch. D. 502.

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truth, or with a reckless disregard as to whether it is true or not, or there must be a material fact knowingly withheld. It is not enough that the misrepresentation is made without reasonable grounds for believing the statement to be true, as the absence of reasonable grounds is no more than evidence of the absence of actual belief. If such a statement is made, however unreasonably, in the honest belief that it is true, it is not fraudulent, and does not render the person making it liable to an action for deceit (a). It must not only be shewn that such misrepresentation or concealment was made with the object of deceiving the person defrauded, but that it did deceive him (b). The misstatement need not be the only inducement to the act of the person deceived (c). This state of the law led to the passing of the **Directors Liability Act, 1890** (d).

(a) *Derry v. Peek*, 14 App. Cas. 337; *Glasier v. Rolls*, 42 Ch. D. 436. See and cf. *Smith v. Chadwick*, 9 App. Cas. 187; *Arkwright v. Newbold*, 17 Ch. D. 301; *Peek v. Gurney*, L. R. 6 H. L. 377; *Ship v. Crosskill*, 10 Eq. 73; *Redgrave v. Hurd*, 20 Ch. D. 1; *Edgington v. Fitzmaurice*, 29 Ch. D. 459; *Bellairs v. Tucker*, 13 Q. B. D.

562; *London and Provincial Electric Lighting Co., Ex p. Hale*, 55 L. T. 679; *London and Leeds Bank, Ex p. Carling*, W. N. 1887, p. 31.

(b) *Ship v. Crosskill*, *supra*.

(c) *Peek v. Derry*, *supra*.

(d) 53 & 54 Vict. c. 64, *post*, Appendix.

The following summary of cases as to actions for deceit on account of fraudulent misrepresentations by directors, &c., of companies, which were decided before the Directors Liability Act, 1890, may be usefully considered here by the practitioner:—

Deceit—Action for, in respect of a company decided on same grounds as common law action for deceit.

Arkwright v. Newbold, 17 Ch. D. 301.

Derry v. Peek, *supra*.

General test whether action can be maintained.

Capel & Co. v. Sims Composition Co., 58 L. T. 807.

Arnison v. Smith, 41 Ch. D. 348.

Cf. *Smith v. Chadwick*, 20 Ch. D. 27; 9 App. Cas. 187.

Representations need not be in writing, but must be as to some fact or intention.

Pasley v. Freeman, 3 T. R. 51.

Evans v. Bicknell, 6 Ves. 174.

Edgington v. Fitzmaurice, 29 Ch. D. 459.

How a prospectus should be construed.

Hallows v. Fernie, 3 Ch. 467.

Derry v. Peek, *supra*.

Construction of document to be decided by judge.

Moore v. Explosives Co., 56 L. J. Q. B. 235.

Representations by agent.

See *British Mutual Banking Co. v. Charnwood Forest Ry. Co.*, 18 Q. B. D. 714.

Bishop v. Balkis Consolidated Co., 25 Q. B. D. 77.

Prospectus issued before company formed.

Karberg's Case [1892], 3 Ch. 1.

Tamplin's Case, W. N. (1892) 146.

Representations must be false to

knowledge of persons making them.

Chandelor v. Lopus, Cro. Jac. 4.

Bellairs v. Tucker, 13 Q. B. D. 562.

Moore v. Burke, 15 L. T. 118.

Derry v. Peek, *supra*,

Glasier v. Rolls, *supra*.

Angus v. Clifford [1891], 2 Ch. 449.

Or must be made recklessly.

Pulsford v. Richards, 17 Beav. 87.

Taylor v. Ashton, 11 M. & W. 401.

Moore v. Burke, *ubi supra*.

Reese River Silver Mining Co. v. Smith, L. R. 4 H. L. 64.

Edgington v. FitzMaurice, *ubi supra*.

See too *A.-G. v. Ray*, 9 Ch. 307, 402, n.; and *British Burmah Lead Co., Ex parte Vickers* (untrue report appended to prospectus), 56 L. T. 815.

Derry v. Peek, *supra*.

Le Lievre v. Gould [1893], 1 Q. B. 491.

Plaintiff must be materially influenced by representations.

Edgington v. FitzMaurice, *ubi supra*.

Pasley v. Freeman, 3 Bulst. 95; 2 S. L. C. 66, 73, 86 (8th ed.).

Moore v. Burke, *ubi supra*.

Attwood v. Small, 6 Cl. & F. 395.

Wontner v. Shairp, 4 C. B. 404.

Henderson v. Lacon, 5 Eq. 249.

Smith v. Chadwick, 9 App. Cas. 187.

Derry v. Peek, *ante*, p. 222.

As to trivial misrepresentations.

See *Smith v. Chadwick*, *supra* (M.R.'s judgment).

But plaintiff need not be solely influenced by misrepresentations.

Clarke v. Dickson, 6 C. B. N. S. 453; E. B. & E. 148.

Kennedy v. Panama, &c., Mail Co., L. R. 2 Q. B. 580.

Carling's Case, *London and Leeds Bank*, 35 W. R. 344.

Derry v. Peek, *ante*, p. 222.

Plaintiff influenced by his own mistake and by misrepresentation of defendant.

Edgington v. FitzMaurice, *ubi supra*.

Mere wrong opinion is not misrepresentation, but expression of intention may be.

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Mutual mistake.

Eaglesfield v. Marquis of Londonderry, 4 Ch. D. 693.

Misrepresentations implied from conduct.

West London Commercial Bank v. Kitson, 13 Q. B. D. 360.

Richardson v. Williamson, L. R. 6 Q. B. 276.

Cf. Beattie v. Lord Ebury, L. R. 7 H. L. 102.

It is immaterial if the misrepresentation is made with innocent object, if false to knowledge of person making it, or if made recklessly.

Edgington v. FitzMaurice, *ubi supra*.

Ship v. Crosskill, 10 Eq. 73.

Smith v. Chadwick, *ubi supra*.

And see *Peek v. Gurney*, L. R. 6 H. L. 377.

Arkwright v. Newbold, *ubi supra*.

Bonâ fide but untrue statement.

Smith v. Chadwick, *ubi supra*; and see *British Burmah Lead Co., Ex parte Vickers*, *ubi supra*.

If representations are ambiguous, plaintiff must state the construction he relied upon.

Smith v. Chadwick, *ubi supra*.

Watts v. Atkinson, 8 T. L. R. 235.

Representations need not be made directly to plaintiff. Third parties.

Clarke v. Dickson, 6 C. B. N. S. 453.

Peek v. Gurney, *ubi supra*.

Scott v. Dixon, 29 L. J. Ex. 63, n.

See too *Barry v. Crosskey*, 2 J. & H. 1, and *Levy v. Langridge*, 4 M. & W. 337.

Statements though literally true may amount to false representations.

Clarke v. Dickson, *ubi supra*.

Mere exaggeration will not support an action.

Denton v. MacNeil, 2 Eq. 352.

Concealment and non-disclosure may or may not amount to misrepresentation according to circumstances.

Arkwright v. Newbold, 17 Ch. D. 301.

Peek v. Gurney, L. R. 6 H. L. 377.

New Brunswick and Canada Ry. Co. v. Muggerridge, 1 Dr. & Sm. 363.

Guarantee of dividend.

Gerhard v. Bates, 2 E. & B. 476.

Knox v. Hayman, 67 L. T. 137.

Misstatement of object in issuing shares.

Edgington v. FitzMaurice, 29 Ch. D. 459.

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It is no defence that plaintiff had the means of discovering the truth.
Kisch v. Central Ry. Co. of Venezuela, L. R. 2 H. L. 99.
Reynell v. Sprye, 1 De G. M. & G. 660.
Redgrave v. Hurd, 20 Ch. D. 1.
But see *Hallows v. Fernie*, *supra*;
Hughes v. Twisden, 55 L. J. Ch. 481; and *Smissen v. Derry*, 4 T. L. R. 19.

Even if plaintiff makes cursory inquiry.

Redgrave v. Hurd, *ubi supra*.
And see *Hughes v. Twisden*, *ubi supra*.

But aliter if plaintiff elect to judge for himself.

Attwood v. Small, 6 Cl. & F. 395.

Marginal note to prospectus.

Moore v. The Explosives Co., 56 L. J. Q. B. 235.

Whether defendants must have been actually engaged in drawing up or issuing the fraudulent prospectus.

Peek v. Gurney, *ubi supra*.
Weir v. Barnett, *infra*. 36
Cargill v. Bower, 10 Ch. D. 502.

Adoption of prospectus by person not engaged in drawing it up.

Derry v. Peek, *ante*, p. 222.
Cf. Watson v. Earl of Charlemont, 12 Q. B. 856.

Whether defendant is liable if he has only seen draft of proposed prospectus.

Glasier v. Rolls, 42 Ch. D. 436.

Discovery of truth by defendants after issue of prospectus, but before allotment of shares.

Arkwright v. Newbold, *ubi supra*.

Issuing subsequent circular shewing true facts will not relieve defendants.

Smith v. Chadwick, *ubi supra*.

Plaintiff must prove the case he alleges in his pleading.

Wilde v. Gibson, 1 H. L. C. 605, 621.

Questions for jury.

Moore v. Burke, 15 L. T. 118.
Wontner v. Shairp, 4 C. B. 404.
Moore v. Explosives Co., *supra*.

Action cannot be maintained against the company.

Western Bank of Scotland v. Addie, L. R. 1 H. L. Sc. 145.

Right of transferee of shares to sue.

Peek v. Gurney, *ubi supra*.
Hyslop v. Morel, W. N. (1891) 19.

Directors quâ agents and acting within authority are not liable personally.

Eaglesfield v. Marquis of Londonderry, 4 Ch. D. 693.

Weir v. Barnett, 3 Ex. D. 32.

Weir v. Bell, 3 Ex. D. 238.

Liability of company in such a case.

Swift v. Winterbotham, L. R. 8 Q. B. 245.

Reversed in part by *Swift v. Jewsbury*, L. R. 9 Q. B. 301.

And see *Barwick v. English Joint Stock Bank*, L. R. 2 Ex. 259.

Effect of laches by plaintiff.

Peek v. Gurney, *supra*.
Ogilvie v. Currie, 37 L. J. Ch. 541.
Bellaïrs v. Tucker, 13 Q. B. D. 562.
Cf. Carling's Case, London and Leeds Bank, *supra*.

Delay in respect of one of several misrepresentations in respect of which action is brought.

London and Provincial Electric Lighting, &c., Co., 56 L. T. 670.

Effect of Statute of Limitations.

Peek v. Gurney, L. R. 6 H. L. 377.

Effect of receipt of interest from company pending action against directors.

Arnison v. Smith, 41 Ch. D. 348.

Estate of deceased director, &c., not liable unless he has received benefit from his fraud.

Peek v. Gurney, *ubi supra*.
See *Davidson v. Tullock*, 3 Macq. 713.

And *New Sombbrero Phosphate Co. v. Erlanger*, 5 Ch. D. 73; 3 App. Cas. 1218.

Liability of directors is several.

A.-G. v. Wilson, Cr. & Ph. 1.

Failure of action for deceit not necessarily fatal to action for rescission of contract to take shares.

Pulsford v. Richards, 17 Beav. 87.

Damages, measure of.

Derry v. Peek, *ante*, p. 222.

Damages may be recovered against third parties.

Pulsford v. Richards, *supra*.

Suit by shareholder on behalf of himself and all other shareholders.

Hallows v. Fernie, 3 Ch. 467.

Joinder of numerous plaintiffs.

Arnison v. Smith, 41 Ch. D. 348.

Death of one or more of such plaintiffs before judgment and no order for revivor.

Arnison v. Smith, 40 Ch. D. 567.

Compromise of action and subsequent claim.

Reid v. London and Staffordshire Fire Insurance Co., 49 L. T. 468.

Effect of winding-up a company against which rescission of contract to take shares is claimed, and which is a defendant jointly with directors against whom damages are claimed.

Kent v. Freehold Land Soc., 3 Ch. 493.

Henderson v. Lacon, 5 Eq. 249.

Cf. Cargill v. Bower, *supra*.

Hall v. Old Talargoch Co., 3 Ch. D. 749.

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Prosecution of directors, &c.—Upon an application, by petition, of any person interested in the winding-up, the Court may order any past or present director, manager, officer, or member, of a company ordered to be wound up by the Court, or subject to its supervision (*a*), or being wound up voluntarily (*b*), to be prosecuted by the liquidator at the expense of the company, if it shall appear that he has been guilty of any offence in relation to the company for which he is criminally responsible (*c*).

The jurisdiction conferred upon the Court is unfettered, and may be exercised when the Court is satisfied that a *prima facie* case has been made out, without allowing the application to stand over to enable evidence to be adduced in opposition (*d*). But, upon a petition for this purpose, the Court will consider the wishes of creditors (*e*).

The application is made ex parte (*f*).

Bankruptcy of directors.—An order for payment of money under s. 10 of the Companies (Winding-up) Act, 1890, is deemed to be a final judgment on which a bankruptcy notice can be served (*g*).

One-man companies.—Although not precisely a case of misfeasance by promoters, &c., the subject of the liability of persons who trade under the name of one-man companies is sufficiently connected with the subject-matter of this chapter to be included here.

When a man fraudulently converts his business into a private company, in which he or his nominees hold practically all the shares and all the debentures, and the formation of the company and the issue of the debentures is a mere scheme to enable the man to carry on business

(*a*) S. 167.

(*b*) S. 168.

(*c*) *Eupion, &c., Gas Co.*, W. N. 1875, p. 10, where there were no funds, and order refused.

(*d*) *Denham & Co.*, 53 L. J. Ch.

E.W.

1113.

(*e*) See *Northern Counties Bank*, 31 W. R. 546.

(*f*) *Denham & Co.*, *supra*.

(*g*) Companies (Winding-up) Act, 1893, *post*, Appendix.

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&c.

in the name of the company with limited liability, the scheme is a fraud on the creditors, and the man is liable to indemnify the company against debts which its assets are insufficient to pay. The company is in law either (as held by Vaughan Williams, J.) a mere agent (and this seems the truer view), or, as held by the Court of Appeal, a mere trustee, for the man, and in either view the right to indemnity follows (*a*). But there must be something dishonest or fraudulent or against the policy of the Joint Stock Companies Acts in the formation of the company for this result to follow (*b*).

Conversely where a bankrupt, when insolvent, converts his business into a one-man company, his trustee in bankruptcy is entitled to obtain from the Court a declaration that the conveyance of the bankrupt's business to the company is void as against him, and that he is entitled to take the assets of the company; but he must pay the new creditors of the company in full in priority to the creditors of the bankrupt, upon the principle that the bankrupt has used the company as his agent and is bound to indemnify it (*c*).

(*a*) *Broderip v. Salomon* [1895],
2 Ch. 323.

(*b*) *Seligman v. Prince* [1895],
2 Ch. 617.

(*c*) *Re Carey, Ex p. Jeffries v.
Carey Cycle Co., Ltd.* [1895], 2 Q. B.
624.

CHAPTER XIII.

RECTIFICATION OF THE REGISTER.

Power to rectify.

The application.

When proceedings must be taken.

Jurisdiction exercisable.

Costs.

Mode of rectifying register.

Stannaries.

THE question when the register of a going company will be rectified does not come within the scope of this work, but it will be useful here to consider the subject of the rectification of the register to some extent, as the power given to the Court by s. 35 (*a*) is not put an end to by the winding-up order. A person whose name is improperly on the register may either apply under the above section, or, when the list of contributories is settled, may make an application objecting to his name being placed thereon, or, after it is settled, to strike his name off it (*b*).

The register of a company is much more readily rectified before than after the winding-up has commenced. The rights of creditors have in all cases to be considered (*c*).

Power to rectify.—The Court, with the object of settling the list of contributories properly, has power to rectify the register of members after the winding-up in all cases where such rectification is required (*d*). It is not, however, intended that the Court in winding up a company is to rectify the register *ex mero motu suo*, but that the Court may exercise the judicial power conferred by the 35th section, having regard to who is the applicant, and to all

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(*a*) See *Reese River Mining Co. v. Smith*, L. R. 4 H. L. 64.

(*b*) See *ante*, Chap. VIII., p. 125.

(*c*) See *Preservative Syndicate* [1895], 2 Ch. 768, as to provision being ordered to be made for the creditors, and see *post*, p. 234.

(*d*) SS. 35, 98. See *Reese River Mining Co. v. Smith*, L. R. 4 H. L.

64. As to the object of the section, see *Ex p. Faris*, 3 K. & J. 408. As to a *mandamus* to compel a company to register, see *R. v. Charnwood, &c., Ry. Co.*, 1 C. & E. 419. For the practice under the 1890 Act and Rules, see *post*, Part II., pp. 349–351.

the circumstances of the case (*a*). And, in settling the list, the Court will rectify the register although no special application has been made (*b*). It is doubtful whether a liquidator in a winding-up subject to supervision has power to rectify the register without applying to the Court (*c*). But it would seem that the liquidator in a winding-up voluntarily has this power (*d*).

The application.—The application to rectify the register may be made by motion or by summons (*e*); but it should usually be made by motion (*f*). It should be intituled in the matter of the Acts of 1862 to 1890, and of the company; and should be served on the person whose name it is intended to put on or remove from the register and the company. In the Chancery Division usually such motions go into the general list of causes, and are not heard as motions (*g*).

If a winding-up order is made and a liquidator appointed after notice of motion under s. 35, service of the notice must be made on the liquidator before the hearing (*h*).

An application on behalf of the company ought to be made in the name of the company, not of the liquidator (*i*).

After the name of a person has been wrongly placed upon the register of any company, it is not in the power of the directors, by simply removing his name from the register, effectually to indemnify him against liability arising from such wrongful insertion of his name; if they desire to do so, they must apply to the Court for the purpose, and if they neglect so to do, the shareholder may himself apply, notwithstanding that his name has been in fact removed (*k*).

A person, whose name has been improperly placed on

(*a*) *Per* Lord Cairns, L.J., in *Sichell's Case*, 3 Ch. 119, 122. *Breckinridge's Case*, 2 H. & M. 642; *Whittle's Case*, 2 De G. & J. 577; *Ward and Henry's Case*, 2 Ch. 431; *Reese River Mining Co. v. Smith*, *supra*. See *Kimberley North Block Diamond Mining Co., Ex p. Werner*, 59 L. T. 579.

(*b*) *Ib.*

(*c*) See *Gilbert's Case*, 5 Ch. 559; and see *post*, Part III., Chap. II., p. 427.

(*d*) *Brighton Arcade Co. v. Dowling*, L. R. 3 C. P. 175, 187; *London Bank of Scotland*, W. N. 1867, p. 114. See *post*, Part III., Chap. I.,

p. 410.

(*e*) S. 35. For form, see p. 560; *Backridge's Case*, 13 W. R. 677, where, after a winding-up order, applications to rectify were adjourned to chambers until the settlement of the list of contributions.

(*f*) See *Duffin v. Mexican Gold Co.*, W. N. 1890, p. 116.

(*g*) *British Burmah Lead Co.*, 56 L. T. 815.

(*h*) *Ex p. Trenchard*, 19 W. R. 96.

(*i*) *Ex p. Kintrea*, 5 Ch. 95.

(*k*) *Martin's case*, 2 H. & M. 669.

the register of members of a company is entitled, under the 35th section, to have his name erased from the register, although the shares in respect of which it was placed there have been declared forfeited, and the forfeiture has been entered in the register (*a*).

The right of a person to have his name removed from the list is not affected by the fact that there is no person in existence who ought to be put on the list in his stead (*b*).

Where, owing to the default of the company, a transfer has not been registered before the winding-up, the Court will not rectify the register on the application of the liquidator, whatever may be the right of the transferor to have it rectified; for the liquidator in such a case represents only the company, to whose default the error is owing, the body of the contributories having no interest in the question except through the company, and the creditors having no direct equity against a person whose name has never been held out to them (*c*). But there are numerous cases in which the register has been rectified on the application of the liquidator where registration of a transfer has been obtained by fraud (*d*).

Where it is alleged that the prospectus contained a material misrepresentation, a statement made by the chairman of the company after its formation in a speech to a meeting of shareholders is not admissible evidence against the company, upon an application to rectify the register (*e*).

When proceedings must be taken.—When a company is wound up either compulsorily, subject to supervision (*f*), or voluntarily (*g*), or even where a stoppage of payment takes place or notices are sent convening a meeting to pass

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(*a*) *The Bank of Hindustan, China, and Japan, Ex p. Los*, 34 L. J. Ch. 609.

(*b*) *Fyfe's Case*, 4 Ch. 768; *Albion Life Ass. Co., Brown's Case*, 18 Ch. D. 639; and see further as to this the cases, Chap. VIII., *ante*, p. 141.

(*c*) *Sichell's Case*, 3 Ch. 119, *per* Lord Cairns, L.J. But see *Albion Ass. Co., Winstone's Case*, 12 Ch. D. 239. See *ante*, p. 140, as to delay in completing transfer.

(*d*) See *Hyam's Case*, 1 De G. F. & J. 75; *Costello's Case*, 2 De G. F. & J. 302; *Lund's Case*, 27 Beav. 465; *De Pass's Case*, 4 De G. & J.

544; *Bennett's Case*, 5 De G. M. & G. 284; *Eyre's Case*, 31 Beav. 177; *Littledale's Case*, 9 Ch. 257; *Benham's Case*, 11 Jur. N. S. 381; *Chappell's Case*, 6 Ch. 902; *Gower's Case*, 6 Eq. 77; *Lankester's Case*, 6 Ch. 905, n.; *Williams's Case*, 9 Eq. 225, n.; *Payne's Case*, 9 Eq. 223; *Ex p. Kintrea*, 5 Ch. 95; and cases in Buckley, under s. 22.

(*e*) *Devala Provident Mining Co.*, 22 Ch. D. 593.

(*f*) *Oakes v. Turquand*, L. R. 2 H. L. 325.

(*g*) *Stone v. City and County Bank*, 3 C. P. D. 282.

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resolutions for a voluntary winding-up (*a*), a legal shareholder, if he has not avoided the contract, or done what is equivalent to avoiding it, before such events, will not be entitled to relief, and will be held liable as a contributory (*b*). But the right of a shareholder to rescission is not barred by the mere fact that the company is unable to meet its engagements at the time when he repudiates, if he has no knowledge of the fact (*c*).

The doctrine is that, after the company is wound up, it ceases to exist, and rescission is impossible; because there are then creditors and contributories, against whom the equities which were available before the winding-up cannot be set up (*d*). The shareholders must, before the date of the presentation of the winding-up petition, have repudiated as far as possible all connection with the company and have taken proceedings in order to have their names removed from the register, and to rescind the contract; in which case it will make no difference if a winding-up order is made before the decision of the Court is given (*e*). An application to discharge a consent order rectifying the register made on the same day on which a winding-up petition was presented was refused (*f*). If there are a number of shareholders in the same position, one shareholder can elect to be bound by the proceedings of another in a representative case, and will be entitled to the benefit of the decision without taking any active part in the proceedings (*g*).

But although a voidable contract is valid until rescinded (*h*), there is a distinction between such a contract

(*a*) *City of Glasgow Bank, Alexander Mitchell's Case*, 4 A. C. 548; as to the director's duty, *Muir v. City of Glasgow Bank*, *ib.* 337; *Mitchell v. City of Glasgow Bank*, *ib.* 624. And see *Tennent v. City of Glasgow Bank*, 4 A. C. 615. See *Kent v. Freehold Land Co.*, 3 Ch. 493. As to delay in application, see *Kincaid's Case*, 2 Ch. 412; *Queen Average Assoc., Ex p. Lynes*, 26 W. R. 432; *Baily's Case*, 3 Ch. 592; *Tuck's Case*, 3 Eq. 795; *Fox's Case*, 5 Eq. 118.

(*b*) *Venezuela Ry. Co. v. Kisch*, L. R. 2 H. L. 99; *Oakes v. Turquand*, *ib.* 325, 367. See *Scottish Petroleum Co.*, 23 Ch. D. 413.

(*c*) *London and Leeds Bank, Ex p. Carling*, 56 L. T. 115, distin-

guishing *Tennent v. City of Glasgow Bank*, *supra*.

(*d*) *Burgess's Case*, 15 Ch. D. 507. See *Houldsworth v. City of Glasgow Bank*, 5 A. C. 317; *Black & Co.'s Case*, 8 Ch. 254.

(*e*) See cases above, and see *Preservation Syndicate* [1895], 2 Ch. 769, *post*, p. 234; *Reese River Mining Co. v. Smith*, L. R. 4 H. L. 64. As to where name is already removed on other grounds, see *Wright's Case*, 7 Ch. 55.

(*f*) *London and Suburban Bank*, 15 Eq. 274.

(*g*) *Parole's Case*, 4 Ch. 497; *Ross v. Estates Investment Co.*, 3 Ch. 682; *McNiell's Case*, 10 Eq. 503.

(*h*) *Oakes v. Turquand*, L. R.

and one which is altogether void (a); for in the latter case there has never been an agreement to become a shareholder, and the fact that a winding-up has commenced makes no difference (b).

Jurisdiction exercisable.—There has been considerable conflict of opinion as to the extent of the jurisdiction to rectify the register. It may, however, be shortly stated that the jurisdiction is not confined to disputes between the company and a member, but extends to disputes between members or alleged members (c), at any rate, in every case to legal title. It is a matter of discretion whether the jurisdiction should be exercised, and in a complicated case the Court may decline to exercise it, and direct an action to be brought (d). In the decision of any question under s. 35, the Court will take into consideration every principle of equity applicable to the subject (e).

The jurisdiction conferred by s. 35 is exercisable in two cases only, and under no other circumstances (f).

(1.) Where the name of a person is, **without sufficient cause, entered in or omitted from the register**, the Court can interfere. And, if a person has been induced by fraud to obtain an allotment of shares, the name is on the register “without sufficient cause” (g). But, where the application

2 H. L. at p. 375; *Reese River Mining Co. v. Smith*, L. R. 4 H. L. 64.

(a) See *Railway Time Tables Co.*, 42 Ch. D. 98. See *ante*, Chap. VIII., p. 132.

(b) *Gorrissen's Case*, 8 Ch. 507; *Wynne's Case*, *ib.* 1002; *Alabaster's Case*, 7 Eq. 273. See *Beck's Case*, 9 Ch. 392.

(c) *Diamond Rock Boring Co., Ex p. Shaw*, 2 Q. B. D. 463, where the question was fully discussed. In the following cases the subject has been considered: *Ward and Garfit's Case*, 4 Eq. 189; *Musgrave and Hart's Case*, 5 Eq. 193. See *Ward and Henry's Case*, 2 Ch. 431; *Askew's Case*, 9 Ch. 664; *Stewart's Case*, 1 Ch. 574; *Ex p. Ward*, L. R. 3 Ex. 180. Cf. *Ex p. Sargent*, 17 Eq. 273; *Penney's Case*, 8 Ch. 446. As to a transfer to a trustee for a company which was subsequently found to be disentitled

to hold its own shares, see *Gardiner v. Victoria Estates Co.*, 12 C. of S. Cas. 1356 (Sc.). See *Davies' Case*, 33 L. T. 834, as to a mortgagee by deposit and an account and rectification of register.

(d) *Ex p. Parker*, 2 Ch. 685; *Simpson's Case*, 9 Eq. 91; *Diamond Rock Boring Co., supra*; *Ex p. Faris*, 3 K. & J. 408.

(e) *Ib.* See also *Stranton Iron Co.*, 16 Eq. 559.

(f) *Ex p. Ward*, L. R. 3 Ex. 180.

(g) *Ex p. Kintrea*, 5 Ch. 95; *Stewart's Case, supra*; *Downes v. Ship*, L. R. 3 H. L. 343; *London and Provincial Electric Lighting Co., Ex p. Hale*, 55 L. T. 670; *Ex p. Carling, London and Leeds Bank*, W. N. 1887, p. 31. See *Met. Coal Consumers' Assoc., Wainwright's Case*, 59 L. J. Ch. 281; *Muir v. City of Glasgow Bank*, 4 A. C. 337; *Houldsworth v. City of Glasgow Bank*, 5 A. C. 317.

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is by a holder of fully paid-up shares to have his name removed on the ground of fraud, the Court will not generally interfere, but will leave the applicant to bring an action (*a*). A contract to take shares cannot be set aside because it was founded on a prospectus which contains exaggerated views of the advantages of the company, but does not contain any material misstatement of fact (*b*). It is not necessary, upon an application for rescission on the ground of fraud, to prove that the misstatements complained of were the sole inducement to enter into the contract (*c*).

The equity to rescind a contract on the ground of fraud or misrepresentation may be lost by laches (*d*), delay (*e*), or acquiescence (*f*).

The waiver of one point is not a waiver of all other points, but the waiver of an objection that there is a discrepancy between a company's prospectus and its memorandum and articles of association amounts to a waiver of any other discrepancy (*c*). Where a shareholder has sold some of the shares originally taken by him, he is not thereby deprived of his right to have the contract, which is a severable one, rescinded as to the remainder on the ground of fraudulent misrepresentations in the prospectus, provided that the shares sold were parted with before the fraud was discovered by the shareholder (*g*).

The mere sending of a notice, which is perfectly good for all the ordinary purposes of the business of the company, may not be held without further evidence to be a notice by

(*a*) *Ruby Consolidated Mining Co., Askew's Case*, 9 Ch. 664. See *Alison's Case*, 9 Ch. 1.

(*b*) *Denton v. Macneil*, 2 Eq. 352. See the following cases as to misrepresentation in prospectus, &c., and also the summaries of cases above referred to: *Oakes v. Turquand*, L. R. 2 H. L. 325; *Houldsworth v. City of Glasgow Bank*, *supra*; *Arkwright v. Newbold*, 17 Ch. D. 301; *Anderson's Case*, *ib.* 373; *Redgrave v. Hurd*, 20 Ch. D. 1; *Smith v. Chadwick*, 9 A. C. 187; *Edgington v. Fitzmaurice*, 29 Ch. D. 459; *Bellairs v. Tucker*, 13 Q. B. D. 562; *Moore v. Explosives Co.*, 56 L. J. Q. B. 235; *British Burmah Land Co., Ex p. Vickers*, 56 L. T. 815.

(*c*) *London and Leeds Bank, Ex p. Carling*, 56 L. T. 115.

(*d*) See *ante*, p. 141, and *Peel's Case*, 2 Ch. 674; *Kincaid's Case*, *ib.* 412; *Hallows v. Fernie*, 3 Ch. 467; *Venezuela Ry. Co. v. Kisch*, L. R. 2 H. L. 99, 125; *Oakes v. Turquand*, *ib.* 325; *Downes v. Ship*, L. R. 3 H. L. 343.

(*e*) *London and Provincial Electric Lighting Co., Ex p. Hale*, 55 L. T. 670; *Russian Ironworks Co., Whitehouse's Case*, L. R. 3 Eq. 790. See *London and Staffordshire Ins. Co.*, 24 Ch. D. 149; as to delay and sufficiency of notice.

(*f*) *Ex p. Briggs*, L. R. 1 Eq. 483; *Scholey v. Venezuela Ry. Co.*, L. R. 9 Eq. 266, n.; *Reid v. London and Staffordshire Fire Ins. Co.*, 49 L. T. 468.

(*g*) *Mount Morgan (West) Gold Mine, Ltd., Ex p. West*, 56 L. T. 622.

which a person seeking to remove his name from the register is bound (a).

The company, also, may become disentitled to relief by laches (b).

The fact of the shares having been taken through a prospectus which is fraudulent, by virtue of s. 38 of the Act of 1867, will not entitle the holder to relief under s. 35 (c). The remedy is in damages against the directors.

Where shares have been issued at a discount, the holder may be entitled to have his name struck off the register, and to have the amount which he has paid refunded. But this remedy may be barred where there is an express or implied new contract to hold the shares, subject to a liability to pay up the full amount upon them, or where the shares have been dealt with as if the holder had been a member of the company in respect of them, and in such a manner as to have assented to keep them (d). And the remedy cannot be obtained in respect of shares which have been sold to a purchaser for value without notice, and subsequently re-transferred in exchange for fully paid-up shares (d).

If shares have by mistake been issued as fully paid-up before a contract has been registered in accordance with s. 25 of the Act of 1867, the Court has power to remove the names of such shareholders from the register, and to direct them to be replaced after registering a contract (e). The company itself can do this while a going concern (f). But in either case the rectification must not affect the rights of third parties, *i.e.* creditors (g).

Where partly paid-up shares had been allotted in pursuance of an agreement between the original shareholders of a company, but no contract had been registered in accordance with s. 25 of the Act of 1867, the Court, upon motion by all the existing shareholders, to which the company appeared and consented, made an order for the rectification of the register by striking out the names of the holders, and directed that their shares should be re-issued after the registration, upon condition that the existing liabilities of the company should be provided for, and that

(a) *London and Staffordshire Ins. Co.*, *supra*.

(b) *European Central Ry. Co.*, *Parson's Case*, L. R. 8 Eq. 656.

(c) *Gover's Case*, 1 Ch. D. 182.

(d) *Railway Time Tables Publishing Co.*, 42 Ch. D. 98. See as to this, *ante*, Chap. VIII., p. 132.

(e) *Denton Colliery Co.*, 18 Eq. 16; *Droitwich Salt Co.*, 22 W. R. 767; *New Zealand Kapanga Gold Mining Co.*, 18 Eq. 17, n.

(f) *Hartley's Case*, 18 Eq. 542; 10 Ch. 157.

(g) *Preservation Syndicate* [1895], 2 Ch. 768.

the contract should be produced to the Court previously to its registration; but without requiring evidence that the allottees were ignorant of the omission to register the contract (a). And in every case where the company is being wound up, although the notice of motion for rectification is served before the winding-up commenced, rectification will only be ordered on terms that provision be made for all debts and liabilities accrued between the issue of the shares and the giving of notice of motion (b).

(2.) Secondly, the register will be rectified where default is made, or unnecessary delay takes place, in entering on the register the fact of any person having ceased to be a member of the company. And if the directors fail to confirm a proper transfer at the first meeting at which, in the ordinary course of business, it can be carried into effect, this will amount to "unnecessary delay" (c). But, although a winding-up has not actually commenced, a shareholder may not be entitled to demand the registration of a transfer after stoppage, and the publishing of a notice convening a meeting to pass voluntary resolutions, and certainly will not, if the rights of creditors have intervened (d). The jurisdiction will not be exercised in order to remove the name of a transferor, where the transfer was required to be, but was not executed by the transferee, or any similar necessary conditions have not been performed before the winding-up (e).

See further, where directors have a discretion, *ante*, Chap. VIII., p. 138.

Delay by a member in applying to rectify the register of shareholders is most material. For, if a shareholder neglect to have the transfer registered before the date of the winding-up, he will be precluded from having his name removed from the list (f).

Costs.—The Court may either refuse the application with

(a) *Darlington Forge Co.*, 34 Ch. D. 522.

(b) *Preservation Syndicate* [1895], 2 Ch. 768.

(c) *Nation's Case*, 3 Eq. 77; *Lowe's Case*, 9 Eq. 589; *Hill's Case*, 4 Ch. 769, n.; *Marzetti's Case*, 15 W. R. 220. But see *Shepherd's Case*, 2 Ch. 16.

(d) *Alexander Mitchell's Case*, 4 A. C. 548; *Nelson Mitchell v. City of Glasgow Bank*, *ib.* 624.

(e) *Marino's Case*, 2 Ch. 596; *Musgrave and Hart's Case*, 5 Eq. 193; *Shipman's Case*, *ib.* 219; *Curtis' Case*, 6 Eq. 455. But see *Ex p. Sargent*, 17 Eq. 273; *Hill's Case*, *supra*.

(f) *Head's Case*, 3 Eq. 84; *Fyfe's Case*, 4 Ch. 768; *Fox's Case*, 5 Eq. 118; *Walker's Case*, 6 Eq. 30. See s. 26 of the Act of 1867, and *supra*.

or without costs to be paid by the applicant, or it may, if satisfied of the justice of the case, make an order for the rectification of the register, and direct the company to pay all the costs and any damages the party aggrieved may have sustained (*a*). There appears to be no authority under the Act, so long as the company is a going concern, to order costs to be paid by any one against whom the motion may be made except by the company (*b*). But under s. 5 of the Judicature Act, 1890, the costs are now in the discretion of the Court (*c*).

S. 35 does not relate to the costs of an appeal from a judge at chambers (*d*).

There appears to be no power to order the payment of additional costs as between solicitor and client by way of damages (*e*).

The Court is not bound by a hard-and-fast rule as to the rate of interest to which a person may be held to be entitled on deposits paid by him, and may have regard to the existing mercantile rate of interest (*f*).

If the application is made after the winding-up has commenced, the Court has jurisdiction to order the costs to be paid as it may think fit (*g*). When a person's name has been placed on the register without his consent, through the false representations of a third party, he is entitled to his costs of the application from the company, though innocent of the fraud (*h*).

Mode of rectifying register.—When a name is to be removed, the register should be rectified by striking through the name with pen and ink, and adding, “By order of the High Court of Justice, dated, &c., this name has been

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(*a*) S. 35.

(*b*) *Ward and Henry's Case*, 2 Ch. 431; *Ex p. Kintrea*, 5 Ch. 95; *Ex p. Sargent*, 17 Eq. 273. But see *Davies's Case*, 33 L. T. 834.

(*c*) See *Freeman v. General Publishing Co.* [1894], 2 Q. B. 380, a case under s. 85.

(*d*) *Ex p. Shaw*, 2 Q. B. D. 463, 474.

(*e*) *Cockburn v. Edwards*, 18 Ch. D. 449; *Willmott v. Barber*, 17 Ch. D. 772. The following cases, *Ex p. Wood*, 15 Eq. 236; *Pontifex's Case*, 36 L. J. Ch. 903; and *Scottish Petroleum Co.*, 17 Ch. D.

373, cannot, it seems, now be considered as good law. See *Ruby Consolidated Mining Co., Askew's Case*, 9 Ch. 664, as to the amount paid on shares being given as damages.

(*f*) *Met. Coal Consumers' Assoc., Wainwright's Case*, 59 L. J. Ch. 281.

(*g*) *Ex p. Kintrea*, 5 Ch. 95. See s. 170, and Gen. O., 1862, r. 74. See p. 244, as to costs on settling the list, and *Musgrave and Hart's Case*, 5 Eq. 193. As to costs generally, see p. 237, *et seq.*

(*h*) *Ex p. White*, 15 W. R. 754.

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erased" (a). Notice of an order rectifying the register must generally be given to the registrar (b).

Stannaries.—The superior Courts have concurrent jurisdiction with the Stannaries Court as to applications for rectification of the register (c), at any rate before the company goes into liquidation.

(a) *Iron Shipbuilding Co.*, 34 Beav. 597. Where there is a doubt as to whether the applicant is the same person whose name appears on the register, see *Ex. p. Webb*, *South-*

ampton, &c., Steamboat Co., 11 W. R. 478; 9 Jur. N. S. 856.

(b) See s. 36.

(c) *Penhale, &c., Mining Co.*, 2 Ch. 398.

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General rule as to costs on petition.	Costs of realization.
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Several petitions.	Costs incurred by company in liquidation.
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Costs in the winding-up.—General rule.	Appeal as to costs.
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Costs of liquidator.	
Solicitor to liquidator.	

General rule as to costs on petition (*a*).—If the petition succeeds and an order is made, the costs of the petitioner, of the company, and of all other persons, if any, properly served with the petition, are paid out of the company's estate (*b*), unless all the assets are charged by debentures (*c*). But where, after a voluntary winding-up, a petition is presented for winding-up under supervision, the company ought to appear by the liquidator, and the costs of a separate appearance will not be allowed (*d*).

If the petition fails and is dismissed, the costs of the company, and of all persons, if any, served with the petition, are borne by the petitioner, unless the Court

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(*a*) In proceedings under the 1890 Act, see the rules, *post*, pp. 305–387.

(*b*) *Humber Ironworks Co.*, 2 Eq. 15. As to the costs of the winding-up order being ultimately thrown on the petitioner, see *Ex p. Sedgwick*, 2 Jur. N. S. 949; *Yniscedwyn Iron Co.*, *infra*. As to the costs of opposing parties being reserved on a petition for winding up an unregistered association, see *South of France, &c., Syndicate*,

36 L. T. 651. As to solicitors employed to oppose a winding-up petition, which is subsequently dismissed, not having a charge for their costs as for property recovered or preserved, see *United Shepherds' Wheal Rose Co.*, W. N. 1885, p. 15.

(*c*) *Brabourne v. Anglo-Austrian Printing, &c., Union* [1895], 2 Ch. 891, *post*, p. 323.

(*d*) *Re A. W. Hall & Co.*, 34 W. R. 56.

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should think that there were sufficient grounds for the petition, when it might be dismissed without costs (*a*).

A shareholder's petition may be dismissed by the Court without costs, where the dismissal is at the wish of a majority of shareholders, and the petitioner had a *bonâ fide* case at the time he presented the petition (*b*). And, again, where a creditor's petition was dismissed as the great body of the creditors opposed it, but they had taken no step to express their opposition until the actual hearing of the petition, the dismissal was without costs (*c*). But where a petition is dismissed, the Court will not, even if it thinks the petition was a *bonâ fide* one, give the petitioner costs (*d*).

The petitioner has been held to be entitled to his costs where a disputed debt was subsequently established and paid by the company, and the petition was accordingly withdrawn (*e*).

But if a creditor brings a petition to a hearing after an offer to pay his debt and costs, he will not be allowed costs incurred after such offer (*f*), and may have to pay any costs subsequently incurred. The same rule applies after an offer to give proper security (*g*).

Where, after the presentation of a petition, the company offered to call meetings of creditors and shareholders, to proceed to a voluntary winding-up, and to pay the petitioner's costs up to that day, if he would stop proceedings, the Court declined to order the company to pay the costs incurred after the date of the offer (*h*).

If a tender is made and refused, the Court may order a direction to be inserted that the claimant should pay all the costs under the order, unless he establishes a claim in excess of the tender (*i*).

Where costs were ordered to be paid to the company upon a shareholder's petition being dismissed, and the company was ordered to be wound up on a creditor's petition before payment, and no discharge could be given

(*a*) *Humber Ironworks Co.*, 2 Eq. 15; *Times Life Ass. Soc.*, *Ex p. Nunneley*, 39 L. J. Ch. 297; *Madras Coffee Co.*, 17 W. R. 643; *General Exchange Bank*, 14 L. T. 582; 14 W. R. 826.

(*b*) *Great Northern Mining Co.*, 14 W. R. 705.

(*c*) *Horbury Bridge Coal Co.*, W. N. 1879, p. 51.

(*d*) *Tyneside Building Soc.*, W. N. 1885, p. 148.

(*e*) *Railway Finance Co.*, 14 W. R. 785; 14 L. T. 507.

(*f*) *Times Life Ass. Soc.*, 9 Eq. 382. See *Home Assce. Ass.*, 12 Eq. 59; *Hereford, &c., Engineering Co.*, 17 Eq. 423.

(*g*) *Imperial Guardian Ass. Soc.*, 9 Eq. 447.

(*h*) *Langley Mills, &c., Co.*, 12 Eq. 26.

(*i*) *Yniscedwyn Iron Co.*, 19 W. R. 194.

for the costs, as a liquidator had not yet been appointed, the company's solicitor was appointed provisional liquidator to receive the costs, an affidavit being made by him that they had not been paid (*a*).

The costs of every person against whom a **personal charge** is made in the petition, and who appears and succeeds in refuting such charge, and is otherwise free from blame, must be paid by the petitioner (*b*).

There can be no **order** as to payment of costs out of the assets under a winding-up order which is subsequently discharged as **invalid** (*c*).

A proviso in the articles of association with respect to "legal proceedings on behalf of the company," does not authorize the application by the directors of the assets of the company in paying the costs of a petition for winding up the company presented by themselves, but opposed by a number of the shareholders and a minority of the directors (*d*).

Shareholders and creditors appearing.—The usual order as to shareholders or creditors not served with the petition, who appear upon reasonable grounds (*e*) to support or oppose it, gives one set of costs between the shareholders, and one set between the creditors, who appear and support a successful, or oppose an unsuccessful, petition (*f*). If a petitioner for a compulsory order asks at the hearing for a supervision order only, and that order is made, creditors who appear and ask for a compulsory order are entitled to costs as supporting (*g*). The advertisement of a petition is, as a general rule, of itself sufficient notice to justify the company and shareholders in appearing, and if they are successful, they are entitled to their costs, although the company may not have been served with the petition (*h*).

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(*a*) *Langham Skating Rink Co.*, 6 Ch. D. 102.

(*b*) *Humber Ironworks Co.*, 2 Eq. 15; *Anglo-Greek Steam Co.*, 2 Eq. 1.

(*c*) See *Estates Investment Co.*, 8 Eq. 227; *Padstow Total Loss Ass.*, 20 Ch. D. 137; *Arthur Average Ass.*, 3 Ch. D. 522.

(*d*) *Smith v. Manchester (Duke of)*, 24 Ch. D. 611.

(*e*) See cases, *infra*.

(*f*) *New Gas Co.*, 5 Ch. D. 703; *European Banking Co.*, *Ex p. Baylis*, 2 Eq. 521; *Albion Bank*, W. N. 1866, p. 388; *Marlborough*

Club Co., 1 Eq. 216; *Anglo-Egyptian Navigation Co.*, 8 Eq. 660; *Hop and Malt Exchange Co.*, W. N. 1866, p. 222; *Carnarvon Slate Co.*, 40 L. T. 35; *Imperial Mercantile Credit Ass.*, W. N. 1866, p. 257; *Oriental Commercial Bank*, *ib.* 283, 312; *Langley Mills Steel, &c. Co.*, 12 Eq. 26; *Patent Cocoa Fibre Co.*, 1 Ch. D. 617. See formerly *Humber Ironworks Co.*, *supra*; *Anglo-Greek Co.*, *supra*.

(*g*) *Chepstow Bobbin Mills Co.*, 36 Ch. D. 563.

(*h*) *Marlborough Club Co.*, *supra*. Where there is no advertisement,

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Secured creditors are allowed to share in the set of costs to creditors without being bound to elect whether they will give up or retain their securities (a).

The rule, that creditors are entitled to only one set of costs, applies whether the petition is by a shareholder or a creditor (b). But the rule is not inflexible, and the Court will be guided by the circumstances of each case (c). And one set of costs has been given to opposing shareholders in addition to those of the company (d); and more than one set of costs has been allowed to shareholders (e).

No costs will be given to shareholders or creditors not served, **supporting a petition which is dismissed**, or opposing a petition on which a winding-up order is made (f).

The Court will discourage the practice, as much as lies in its power, of instructing counsel to appear on winding-up petitions merely for the purpose of getting costs. For although it is usual to give one set of costs when many creditors appear, and there is reasonable ground for appearing, yet a creditor is not entitled to his costs as a matter of right (g). Costs of shareholders have been refused where the petition did not affect their interests (h). So, where some of the creditors and shareholders joined in the petition, the costs of others were refused, where there was no occasion for their separate appearance (i). And where the same solicitor acted for all parties, and they unnecessarily appeared separately, no costs were allowed out of the company's estate (k).

Provisional liquidator appearing.—A provisional liquidator

see *United Stock Exchange Co.*, 28 Ch. D. 183. See cases in last note.

(a) *Carmarthenshire, &c., Iron Co.*, 45 L. J. Ch. 200; and *Moor v. Anglo-Italian Bank*, 10 Ch. D. 581.

(b) *New Gas Co.*, 5 Ch. D. 703. See *Carnarvonshire Slate Co.*, 40 L. T. 35; *Diamond Fuel Co.*, W. N. 1878, p. 11. See also *European Life Assce. Soc.*, 10 Eq. 403; *London and Suburban Bank*, 19 W. R. 88; *Ex p. Fox*, 6 Ch. 176; *Bosworthon Mining Co.*, 26 L. J. Ch. 612.

(c) *Albion Bank*, *supra*; *Anglo-Egyptian Navigation Co.*, 8 Eq. 660.

(d) *Anglo-Egyptian Navigation Co.*, *supra*. See *Alliance Contract Co.*, W. N. 1867, p. 218, company ordered to pay costs and no other

order.

(e) *Albion Bank*, *supra*.

(f) See cases, note (f), *supra*, p. 239.

(g) *Hull and County Bank*, 10 Ch. D. 130. See *Military and General Tailoring Co.*, 47 L. J. Ch. 141; *Walkham United Mines*, W. N. 1882, p. 134. As to a creditor appearing to support the first of several petitions, which is dismissed, asking for costs on the second, see *British Guardian Ass. Soc.*, 24 W. R. 637.

(h) *Star and Garter Hotel Co.*, 42 L. J. Ch. 374.

(i) *City Glass Co.*, W. N. 1874, p. 116.

(k) *Military and General Tailoring Co.*, *supra*.

is only in the position of a receiver, and his costs of appearing will not in general be allowed, notwithstanding that he has been served (a).

Several petitions.—The established rules where more than one petition is presented may be stated to be as follows (b). When a winding-up petition is presented by one creditor, and a second creditor being aware of that petition chooses to present a second, he does so at his own risk as to costs, and must prove, not merely that he has reason to suspect that the first petition was not *bonâ fide* presented, but that *mala fides* or collusion actually exists (c). If it turns out that the first petition is collusive, that is to say, merely for the purpose of protecting the company against its creditors, and collusion is *proved* (d), that petition as matter of course will be dismissed with costs, and an order will be made on the second petition. But if the first petition is presented *bonâ fide*, and is not proved to be collusive, then the second petition may be dismissed. When the second petitioner has no notice of the presentation of the first petition, one order is frequently made on the two petitions. And in one case the second petitioner was held entitled to his costs when he stated that he was informed of the first petition only when he took his petition to the senior registrar's office for presentation, and after that no further costs were incurred (e). A creditor is not entitled to present a second petition merely on the ground that the company's petition may be dropped, if there is no collusion (f).

Where collusion is suspected, it is the duty of a second petitioner before presenting his petition to write and ask the first petitioner if he is going to take a compulsory order, and to state that unless he receives an answer before a certain day, he will present another petition (g).

A person, therefore, who presents or proceeds with (h)

(a) *General International Agency Co.*, 36 Beav. 1. But some costs were allowed in *European Banking Co.*, 2 Eq. 111; 32 W. R. 847.

(b) *Norton Iron Co.*, 47 L. J. Ch. 9; *Building Soc. Trust*, 44 Ch. D. 140.

(c) *Building Soc. Trust*, 44 Ch. D. 140; *Accidental and Marine Assee. Co.*, 36 L. J. Ch. 75 (considered in an Irish case, *Dublin Grains Co.*, 17 L. R. Ir. 512); *Joint Stock Coal Co.*, 8 Eq. 146.

(d) Suspicion is not sufficient, *United Service Co.*, 7 Eq. 76; *Commercial Discount Co.*, 32 Beav. 198; *Humber Ironworks Co.*, 2 Eq. 15; *Norton Iron Co.*, *supra*; *Building Soc. Trust*, *supra*.

(e) *Brooke & Co.*, W. N. 1888, p. 213.

(f) *Standard Portland Cement Co.*, 50 L. J. Ch. 408.

(g) *Norton Iron Co.*, *supra*.

(h) *General Financial Bank*, 20 Ch. D. 376.

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a petition, knowing that another petition has already been presented, without such special justification as above mentioned, in addition to the risk of having to pay costs incurred by himself, may possibly also be compelled to pay the costs of persons he has served (a). Each petition, however, irrespective of any objection as to its being a second petition, must be dealt with upon its own merits (b).

If, on the other hand, the second petitioner has had **no notice of the first petition** (c), he is entitled to his costs up to the time when he became aware of it (d); but if he then proceeds, he will not be allowed his further costs unless, as pointed out above, he had good reason to suppose that the prior petition was not *bonâ fide* (e).

Costs have been given to a second petitioner because the order appointing the provisional liquidator was made on his application, and was beneficial to the creditors (f).

When it is considered that several petitions have been properly presented, one order may be made on all the petitions, and the costs of all paid by the company; but one set of costs only will be allowed to creditors and one to contributories properly appearing and supporting the petitions.

Where two petitions were presented, and a winding-up order was made on the second petition, on the ground that the validity of the first petitioner's debt was disputed, liberty was given to the first petitioner to apply for the costs of her petition, if her claim should be ultimately established (g).

It should be observed that the mere fact that the first petition has been advertised does not necessarily raise a presumption of notice; and where a creditor, who did not know of a petition which had been advertised *six* months previously, and which stood over *sine die*, presented another petition, the Court gave him his costs (h). In a case

(a) See cases, note (c), *supra*, p. 241.

(b) *Building Societies Trust*, 44 Ch. D. 140; *Sheringham & Co.*, 37 Sol. J. 75; *European Banking Co.*, 2 Eq. 521; *Commercial Discount Co.*, *supra*; *Commercial Bank of S. Australia*, 33 Ch. D. 174.

(c) *Marron Bank Co.*, 38 L. T. 140; *Brooke & Co.*, *supra*; *Owen's Patent Wheel Co.*, 29 L. T. 672; 22 W. R. 151; *London and Australian Agency Co.*, 29 L. T. 417; 22 W. R. 45. See *Wynaad Gorddu*

Mining Co., 31 W. R. 226.

(d) And a share in the set of costs allowed to creditors supporting the first petition, if the second petitioner is a creditor, and does support the first petition, *Sheringham & Co.*, W. N. (1893) 5.

(e) *General Financial Bank*, 20 Ch. D. 276.

(f) *Commercial Bank of S. Australia*, *supra*.

(g) *Great Britain, &c., Soc.*, 16 Ch. D. 246.

(h) *Marron Bank Co.*, *supra*.

arising out of a contract for the sale of shares, it was held that the advertisement was notice to all the world of the presentation of the petition (*a*); but this presumption would not arise where a reasonable time has not elapsed, sufficient to impute a knowledge of the publication (*b*). It does not, however, appear to be decided what will be considered to be a reasonable time after which it would be assumed that the second petitioner had knowledge of the advertisement.

Where a petitioner had neglected to prosecute the petition which he had presented within the time limited, an order was made in the interim on another petition in another branch of the Court (*c*).

It is the duty of a petitioner to search for prior petitions before presenting his own. If he fail to do this he will not be allowed the costs of his petition subsequent to the time when he ought to have made the search.

The presentation of a petition by a creditor through the solicitor to the company is a mode disapproved of by the Court, and the carriage of the order may be given to another creditor, and the petitioner's costs disallowed (*d*).

The conduct of the winding-up was given to a paid-up shareholder where one order was made on two petitions, one presented by a paid-up shareholder, and the other by shareholders who had only paid a deposit (*e*).

The jurisdiction of the English Courts is not affected by the presentation of a foreign petition, and the appointment of a provisional liquidator between the presentation and the hearing of an English petition to wind up the same company (*f*).

Petitioner's costs a charge.—The petitioner's taxed costs in a winding-up are a first charge on the estate, and must

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See also *Empire Ass. Corp.*, 16 L. T. 341; *National Bank*, L. T. (Eur. Arb.) 92; *Owen's Patent Wheel Co.*, *supra*; *British and Foreign Gas Co.*, 13 W. R. 649; 12 L. T. 368; 11 Jur. 559; *Brooke & Co.*, W. N. 1888, p. 213.

(*a*) *London, Hamburg, &c., Bank*, *Emmerson's Case*, 1 Ch. 433. But see *United Service Co.*, 7 Eq. 76. See as to other parties interested, *Marlborough Club Co.*, 1 Eq. 216; *New Gas Co.*, 5 Ch. D. 703.

(*b*) *National Bank Case* (Eur. Arb.), L. T. 92. See also *Oriental Bank Corp.*, *Ex p. Guillemin*, 28 Ch. D. 634; *Empire Ass. Corp.*, *supra*.

(*c*) *Consolidated Bank*, 14 L. T. 656.

(*d*) *Lennox Publishing Co.*, 61 L. T. 787.

(*e*) *Constantinople Hotels Co.*, 13 W. R. 851; *Berlin Great Market, &c.*, 19 W. R. 793.

(*f*) *Commercial Bank of S. Australia*, 33 Ch. D. 174.

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be paid in full in priority to the costs of the liquidator (*a*). These costs have been held to include the costs of establishing a claim against the company (*b*); and of an application to stay an action pending the hearing of the winding-up petition (*c*). But this rule only applies to the costs of the petitioner, and other persons are not entitled to any priority of payment merely because their order in any winding-up proceedings bears an earlier date than that of another person to whom costs are also ordered to be paid (*d*).

The petitioner is entitled to costs **without any set-off** being made against calls that may become due from him as contributory (*e*).

Preliminary inquiries.—Where a petition is presented and is opposed on certain grounds, with respect to which an inquiry is directed, if the result shews that the petitioner's contention was correct, and the right to a winding-up order is established, the costs of these preliminary proceedings must be borne by the persons whose opposition was the cause of the inquiries being directed (*f*).

Contributories' costs.—Where an alleged contributory is successful in his application to be taken off the list, the costs will in a proper case be paid to him out of the estate (*g*). But the costs of a contest by a person **unsuccessfully** disputing his liability to be a contributory must, as a general rule, be paid by the contributory (*h*), notwithstanding the case is one of extreme hardship (*i*). There are, however, very special cases where the costs have been

(*a*) *Audley Hall Cotton Spinning Co.*, 6 Eq. 245. See now C. W. U. R. 1890, r. 31.

(*b*) *Universal Non-Tariff Ins. Co.*, 19 Eq. 485.

(*c*) *People's Garden Co.*, 1 Ch. D. 44.

(*d*) *Marlborough Club Co., Ex p. Percival*, 6 Eq. 519. See *Dominion of Canada Plumbago Co.*, 27 Ch. D. 33; *Home Investment Soc.*, 14 Ch. D. 167; *Dronfield Coal Co.* (No. 2), 23 Ch. D. 511. As to a solicitor's costs who is employed to oppose a winding-up petition, and who does so successfully, see *United Shepherds' Wheel Rose Co.*, W. N. 1885, p. 15.

(*e*) *General Exchange Bank*, 4 Eq. 138. See also *Equestrian Buildings Co.*, 1 Megone 115.

(*f*) *Re Bosworthon Mining Co.*, 26 L. J. Ch. 612.

(*g*) *Nation's Case*, 3 Eq. 77; *Coates' Case*, 17 Eq. 169; *Emmerson's Case*, London, Hamburg, &c., Bank, 1 Ch. 433; *Ship's Case*, 2 D. G. J. & S. 544; *Patent File Co., Ex p. White*, 16 L. T. 276 (where no fault of company).

(*h*) *Birkbeck Assce. Co.*, 13 W. R. 380; *Gower's Case*, 6 Eq. 77; *Andrew's Case*, 3 Ch. 161; *Musgrave & Hart's Case*, 5 Eq. 193; *Ex p. Davidson*, 4 K. & J. 688; *Gilbert's Case*, 5 Ch. 559. See also *Hampshire Milk Co.*, W. N. 1880, p. 194; *Ritso's Case*, W. N. 1875, p. 203.

(*i*) *Ex p. Oakes & Peek*, L. R. 2 H. L. 325.

allowed out of the estate (*a*); and where the application was by the liquidator (*b*), and also where it was by the alleged contributory (*c*), no costs have been given. The Court does not seem, formerly, to have adhered so strictly to the above rule, and persons have not been made to pay costs where they have unsuccessfully resisted being made contributories under circumstances of considerable hardship; but it is doubtful how far these decisions would be followed at the present time. Costs of both sides have been given out of the estate (*d*).

So, if a contributory applies unsuccessfully to have another person put on the list, the application will, as a rule, be dismissed with costs (*e*).

Creditors appearing will not be given costs, as, generally, only one set of costs will be allowed, namely, the liquidator's (*f*).

Delay by an infant shareholder in applying to have his name removed from the list disentitles him to the costs (*g*).

On the other hand, where the liquidator appeals unsuccessfully against an order excluding a person from the list, or unsuccessfully resists an appeal by a person seeking to have his name removed from the list, the **alleged contributory**, as a rule, will get his costs (*h*) out of the assets in priority to the liquidator's costs, and the general costs of liquidation including cost of realization (*i*).

Costs of proof of debts.—Creditors who come in and prove their debts or claims, pursuant to notice from the liquidator, are allowed their **costs of proof**, which are added to the debt when established. And where a claim against a company in liquidation is adjourned into Court, and allowed with costs out of the estate, only the costs of the adjournment are meant to be given, and the costs incurred by the claimants in chambers must be added to the amount of the claim (*k*). So also an order directing the "costs of the application" to be paid, means simply the costs of the adjournment into Court (*l*).

(*a*) *Cleland's Case*, 14 Eq. 387.

tagu's Case, *Grey's Case*, 59 L. T. 208.

(*b*) *Mallorie's Case*, 15 W. R. 52;
Fletcher's Case, 37 L. J. Ch. 49.

(*g*) *Ex p. Hart*, *Re Alexandra Park Co.*, 6 Eq. 512. See *Shewell's Case*, 2 Ch. 387.

(*c*) *Purdey's Case*, 16 W. R. 660.
See *Gregg's Case*, 15 W. R. 82.

(*h*) *Beck's Case*, *Re United Ports Co.*, 9 Ch. 392.

(*d*) *West of England Bank*, *Ex p. Fletcher*, 12 Ch. D. 284.

(*i*) *Home Investment Co.*, 14 Ch. D. 167; and see *post*, pp. 248, 323.

(*e*) *Bugg's Case*, 2 Dr. & S. 452.
See *Musgrave and Hart's Case*, *supra*.

(*k*) *Ex p. Wright & Gumble*, *Re General Estates Co.*, 8 Eq. 123.

(*f*) *Anglo-Indian and Colonial Industrial, &c., Institution*, *Mon-*

(*l*) *Holden's Case*, 8 Eq. 444.

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But costs incurred by disputing the debt, if given against the company, must not only be paid in full (*a*), but execution for them will not be restrained. And so, where a claim made by a creditor is partly successful, and another claim against him by the liquidator is entirely unsuccessful, the costs in proving the debt will be added to it, but the costs incurred by the creditor on account of the liquidator's claim will be paid in full (*b*).

The costs will not be given against the liquidator personally (*c*).

If, on the other hand, a person claiming to be a creditor appeals against a disallowance of his debt, and fails on the appeal, the application will, as a rule, be dismissed with costs (*d*). An exception may be made in a proper representative case (*e*).

Contributories or creditors have no general right to be heard in all applications in the liquidation, and if they appear on proceedings in the winding-up, they will be deemed to do so at their own expense (*f*), unless, in a winding-up under the Act of 1862, appointed as representatives under r. 61 (*g*). There is no similar rule under the new practice (*h*).

The word "proceedings" in the last-mentioned rules do not include an examination under s. 115 of the Act of 1862 (*i*).

(*a*) *Ex p. Levick*, 5 Eq. 69; *Madrid Bank v. Pelly*, 7 Eq. 442; *Bailey and Leatham's Case*, 8 Eq. 94; *Marseilles Extension Ry., &c., Co.*, *infra*; *London and Colonial Bank*, 7 Eq. 550; *Gartness Iron Co.*, 10 Eq. 413; *Haytor Granite Co.*, 1 Ch. 77. See also *per Cairns, L.J.*, in *Ex p. Smith*, 3 Ch. 125, 130.

(*b*) *Lombard Deposit Bank*, 50 L. J. Ch. 749; *Morshead v. Reynolds*, 21 Beav. 638.

(*c*) See *post*, p. 249, and *Marseilles Extension Ry., &c., Co.*, 30 Ch. D. 598.

(*d*) *Ex p. Lloyd*, 1 Sim. N. S. 248; *Wryghte's Case*, 2 De G. M. & G. 636. And see *S. C.*, 5 De G. & S. 244; *Croxtan's Case*, 5 De G. & S. 432; *Ferrao's Case*, 9 Ch. 355.

(*e*) See *Ex p. Hargrove & Co.*, 10 Ch. 542.

(*f*) *Per Malins, V.C.*, in *Re*

Overend, Gurney, & Co., 3 Eq. 576, 634. See *British Nation Ass.*, 14 Eq. 492, 501; *Ex p. Cotterell*, 32 L. J. Ch. 66; *Adanson's Fibre Co.*, 9 Ch. 637, n.

(*g*) As to this, see *McIver's Claim, International Life Ass. Soc.*, 5 Ch. 424; *Mexican, &c., Mining Co.*, 6 W. R. 560; *Era Ass. Co.*, 11 W. R. 320; *Ex p. Cotterell*, 32 L. J. Ch. 66; *Ex p. Orpen*, 32 L. J. Ch. 633; *Ex p. Anchor Ass. Co.*, 32 L. J. Ch. 206; *Saxon Life Ass. Soc.*, 2 John. & H. 408. And, on appeal, see *Ex p. Costello*, 30 L. J. Ch. 113; *Ex p. Budd*, 31 L. J. Ch. 4; *Spackman v. Evans*, L. R. 3 H. L. 171; *S. P. Evans v. Smallcombe*, *ib.* 249; *Re Overend, Gurney, & Co.*, 3 Eq. 576, 634.

(*h*) See r. 173 of 1890 Rules, *post*, p. 382.

(*i*) See *ante*, p. 197, and *Norwich Equitable Fire Ins. Co.*, 27 Ch. D.

After a contributory has become bankrupt, he is a stranger to the company, and there is no jurisdiction to make any order on his application (*a*).

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Costs under s. 10 of the 1890 Act.—As to costs which will be allowed under this section, see note to r. 78 of the 1890 Rules, *post*, Part II., p. 348. Where moneys recovered are charged by debentures, see as to liquidator's right to deduct costs, note to r. 31 of 1890 Rules, *post*, Part II., p. 323.

Costs in the Winding-up.—General rule.—The judge exercises a judicial discretion as to costs in all cases, with a few exceptions mentioned in O. 65, r. 1, and s. 5 of the Judicature Act, 1890 (*b*).

The tendency of the Courts now is to make persons who are unsuccessful in litigation pay the costs, whatever the cause of their failure, but no general rule can be laid down (*c*). The rule, so far as it is followed, applies as well in favour of, as against, the company, and not only in cases of litigation between the company and its contributories, but also in those between it and non-contributories, or between different classes of contributories disagreeing among themselves (*d*). But in representative cases, it is usual not to make the party selected pay costs, and frequently the company is ordered to pay them, although he is unsuccessful; but not solicitor and client costs (*e*). In many cases no order is made as to the costs, except that those of the liquidator are to be costs in the winding-up.

Unless the judge acting in the winding-up makes an order to the contrary, or except where persons desire to attend the proceedings for their own protection (*f*), the costs and expenses incurred in proceedings subsequent to the winding-up order of a non-litigious description are defrayed by the company. If the assets are sufficient, the costs

515; *Greys Brewery Co.*, 25 Ch. D. 400. Cf. *Brampton, &c., Ry. Co.*, 11 Eq. 428, where a contributory was held entitled to cross-examine a creditor on his affidavit.

(*a*) *Cape Breton Co.*, 19 Ch. D. 77. See *ante*, p. 207.

(*b*) For an instance under the Companies Acts, see *Freeman v. General Publishing Co.* [1894], 2 Q. B. 380.

(*c*) See formerly, *Gilbert's Case*,

5 Ch. 559; *Ex p. Sichell*, 1 Sim. N. S. 187; *Ex p. Hall*, 1 De G. M. & G. 1. But see *Sichell's Case*, 3 Ch. 119. As to costs in the Stannaries, see *Prosper Mining Co.*, L. R. 7 Ch. 288.

(*d*) Lindley, 860 (5th ed.).

(*e*) *Mutual Society*, 18 Ch. D. 530. But see *Part's Case*, 10 Eq. 622, when allowed.

(*f*) See C. W. U. R. 1890, r. 173.

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payable by the company are discharged by the liquidator, otherwise calls are made for the purpose.

Order of priority in payment of costs.—The Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the estate of the company of the costs, charges, and expenses incurred in winding-up any company in such order of priority as the Court thinks just (*a*).

As regards companies which are not affected by the Act of 1890 (*b*), the rule of the Court as to the order in which the costs incurred in relation to the winding-up of a company are payable out of the assets is, in the absence of any special agreement, this, that (1) in the first place the costs of the petition for winding-up are to be paid (*c*); next (2) costs ordered to be paid by the liquidator, or out of the assets, to a successful litigant, who is entitled *prima facie* to immediate payment in full in priority to the general costs of liquidation, including costs of realization (*d*). The *onus* is on the liquidator to shew that immediate payment cannot be made; if he shews that other persons have a prior right to, or are entitled *pari passu* with the successful litigant, no order for payment will be made without providing for the other claims (*e*). The date of the order gives no priority, but payment will not be indefinitely postponed until all claims have come in (*f*). Then (3) the general costs of the winding-up (*g*); and lastly (4) the remuneration of the liquidator; and then other costs without priority *inter se* (*h*); but no remuneration can be given until all the costs of the winding-up are paid, including the costs of any provisional liquidator who may have been properly appointed (*i*). The solicitor's

(*a*) S. 110. Cf. s. 144.

(*b*) As to windings-up under supervision, or commenced before 1st January, 1891, see the saving words in s. 31 of the Act of 1890.

(*c*) *Ante*, p. 237.

(*d*) *Dominion of Canada Plumbago Co.*, 27 Ch. D. 33; *Home Investment Soc.*, 14 Ch. D. 167; *Dronfield Coal Co.*, 23 Ch. D. 511; *Re Blundell*, 44 Ch. D. 1; *London Metallurgical Co.* [1895], 1 Ch. 758. The rule is the same under the 1890 Act and rules, *London Metallurgical Co.*, *supra*.

(*e*) *London Metallurgical Co.*, *supra*.

(*f*) *Ib*.

(*g*) But see *post*, p. 253, as to mortgaged assets.

(*h*) See *Ex p. Percival*, 6 Eq. 519.

(*i*) *Re Massey*, 9 Eq. 367; *Exp. Percival*, 6 Eq. 519. See *Re Trueman's Estate*, 14 Eq. 278; *Webb v. Whiffin*, L. R. 5 H. L. 711. See *Batten v. Wedgwood Coal Co.*, 28 Ch. D. 317; *Brabourne v. Anglo-Austrian Printing Co.* [1895], 2 Ch. 891, as to priority in a debenture-holder's action where there is insufficient estate.

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bill of costs is part of the costs of the winding-up, and if the liquidator has paid any costs out of pocket, he may be entitled to be repaid out of the assets *pari passu* with costs similarly paid by the solicitor (*a*). Where the remaining assets are insufficient to pay a former solicitor to the liquidator, and also costs out of pocket incurred by the liquidator, the Court ordered such assets to be apportioned equally between them (*b*).

The above rule, however, does not affect the rights of mortgagees, and principal and interest must be paid out of assets specifically mortgaged in priority to any costs which are not incurred for their benefit.

When a supervision order is made on the petition of a creditor, the costs of the liquidator previously incurred are payable first, then the petitioner's costs in priority to the liquidator's costs incurred after the order (*c*).

As regards all companies wound up by order of the Court after 1st January, 1891, see r. 31 of the Companies Winding-up Rules, 1890.

Costs of Liquidator.—Under the former Acts, where the liquidator was plaintiff or applicant in some action or proceeding in which he failed, the costs were ordered to be paid personally by him, but without prejudice to any application to the judge having the control of the winding-up that they should be allowed out of the estate (*d*). But now if the liquidator is defendant or respondent in proceedings in which he fails, costs are given out of the estate only, not against the liquidator personally (*e*). And apparently the rule is the same where he is plaintiff or defendant (*f*). If the assets are deficient, the defendant should apply for security for costs under s. 69 of the 1862 Act.

(*a*) As to an agent of the liquidator's solicitor, see *Hermann Loog, Ltd., Ramsay's Case*, 36 Ch. D. 502.

(*b*) *Dominion of Canada, Plumbago Co., supra*, and see *post*.

(*c*) *New York Exchange Co.* [1893], 1 Ch. 371.

(*d*) *Grand Trunk Ry. Co. v. Brodie*, 3 De G. M. & G. 146. See the judgment of Kindersley, V.C., in *Consols Ins. Co. v. Wood*, 2 Dr. & S. 353; and see *Caldwell v. Ernest*, 27 Beav. 39, 42; *Jones v. Jones*, 2 De G. J. & S. 294. *Quere*, as to the power under the

present Acts to order a liquidator proceeding in the name of the company to pay costs, but compare cases in bankruptcy.

(*e*) *Salisbury-Jones and Dale's Case* [1895], 1 Ch. 333, overruling *South Staffordshire Gas Co.* [1893], 3 Ch. 523.

(*f*) *Marseilles Extension Ry., &c., Co.*, 30 Ch. D. 598. See *Fraser v. Province of Brescia Steam Tramways Co.*, 56 L. T. 771; *Ex p. Bentley*, 12 Ch. D. 850, 857. As to a case of doubt, see *Mac-lagan's Case*, 51 L. J. Ch. 841.

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Where the form of order directs that the costs of a successful litigant are to be paid by the liquidator, and that he is to be at liberty to retain them out of the assets, the liquidator has been held to be entitled to repay himself the costs out of the assets in priority to all other creditors (a). When costs, however, have been properly incurred by the liquidator in litigation, he will have them, and also his own costs, out of the estate. As a rule the assets are sufficient, and an order is accepted by the adverse litigant for payment out of the estate. A liquidator is not entitled, in the absence of any special direction, to have his costs taxed as trustee's costs (b).

But there can be no doubt of the power of the Court to order a liquidator personally to pay any costs, charges, or expenses improperly incurred by him in winding up the company, and without recourse to the company; and, on more than one occasion, the liquidator has been made to bear his own costs (c). He will lose his costs if he omits to furnish the Court with the necessary documents (d). So where his books have not been properly kept, the Court may refuse to make any order as to his costs (e). So, also, where he disregards his duty, or throws upon the parties costs which he ought not to do (f). A liquidator is not entitled to the same indulgence as an ordinary gratuitous trustee, and may be deprived of costs for a mistake (g).

When a winding-up order is discharged as void, the liquidator appointed under it is not entitled, out of the estate of the company, to his costs incident to his appointment, or to his costs in an action instituted under the direction of the Court, or to any remuneration (h).

If a liquidator desires to be safe as regards costs of an appeal, he should apply for leave to appeal to the judge who has control of the winding-up. The present practice of the Court of Appeal, where the liquidator appears in an appeal in the winding-up, and his costs are not payable by any party to the appeal, is to refuse to determine whether they should be given out of the estate. The liquidator must

(a) *Dominion of Canada Plumbago Co., supra*; *Campbell's Case*, 4 Ch. D. 470.

(b) *East Holyford Mining Co.*, Ir. R. 10 Eq. 361.

(c) *Lindley*, 863 (5th ed.). See *Ex p. Roberts*, 1 Drew. 204; *Clifton's Case*, 5 De G. M. & G. 743; *Ex p. Woolmer*, 22 L. J. Ch. 513; *Marseilles Extension Ry., &c., Co.*, *supra*.

(d) *Drummond's Case*, 21 L. T. 317. As to payments by the liquidator to his solicitor, see *Union Cement Co.*, 20 W. R. 361.

(e) *Ex p. A'Beckett*, 2 Jur. N. S. 684.

(f) *Marseilles Extension Ry., &c., Co.*, *supra*.

(g) *Silver Valley Mines*, *infra*.

(h) *Ex p. Harding, Plumstead Water Co.*, 11 W. R. 99.

apply for these costs to the judge below, who will order the payment of them out of the estate unless he sees any reasons to the contrary (a). Where the liquidator is respondent to an appeal which is allowed with costs, the costs are only given out of the assets, not against the liquidator personally (b). Probably the rule is the same where he is appellant, and if so, the respondent should apply for security for costs.

In cases where the Act of 1890 does not apply (c), from time to time during the winding-up the liquidator makes an application by summons for an order to tax his costs (d). An order to pay the costs, &c., is, as a rule, subsequently obtained, but occasionally the registrar sanctions the payment after taxation without an order, and the liquidator provides for them in his next account. In giving liberty to pay, the registrar may make a note, and provide for payment in the next account, and no order will be drawn up (e). Sometimes an order may be obtained giving the liquidator liberty to pay a certain sum to his solicitor on account of costs without prejudice to the taxation of such costs.

Where the order to tax provides, as is usual, that in taxing the costs the taxing master is to have regard to any sums of money received in respect of costs of compromise with any contributories or otherwise, it is necessary that the liquidator and his solicitor should produce an affidavit as to costs received in respect of compromises, &c., on taxation.

See further as to taxation, *post*, p. 259.

Solicitor to liquidator.—The liquidator is not personally liable to his solicitor for the costs of the winding-up (f); nor, it seems, is a voluntary liquidator (g). The solicitor

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(a) *Re Silver Valley Mines*, 21 Ch. D. 381, 387; *Wescomb's Case*, 9 Ch. 553. See *Ex p. Littledale*, 9 Ch. 257, 262; *Ferrao's Case*, *ib.* 355; *Cambrian Steam Packet Co.*, 4 Ch. 112. But see, on the other hand, the rule in *Robinson's Case*, *Peruvian Rys. Co.*, 4 Ch. 322, as to a liquidator's costs in supporting unsuccessfully being allowed out of the estate; and *Stringer's Case*, *ib.* 475; see also *Ship's Case*, 13 W. R. 599; *Sichell's Case*, 3 Ch. 119; *Bush's Case*, 6 Ch. 246. Cf. *Ex p. Angerstein*, 9 Ch. 479; and *Fraser v. Province of Brescia Steam*

Tramways Co., 56 L. T. 771.

(b) *Salisbury-Jones and Dale's Case* [1895], 1 Ch. 333.

(c) See s. 31 of the Act of 1890, as to windings-up under supervision, and as to windings-up commenced before 1st January, 1891.

(d) See *infra*, p. 259, as to taxation.

(e) See R. S. C. 1883, O. 55, r. 74 (a), December, 1885.

(f) *Anglo-Moravian Ry. Co.*, 1 Ch. D. 130; *Dominion of Canada Plumbago Co.*, 27 Ch. D. 33.

(g) *Re Trueman's Estate*, 14 Eq. 278.

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is appointed by the liquidator on the terms that he is to look to the assets of the company only, and not to the personal credit of the liquidator (*a*). Of course, this rule in no way interferes with cases where an order is made that the liquidator should be personally liable to pay the costs to an adverse litigant (*b*). It is the duty of the liquidator to obtain the decision of the judge in chambers where the solicitor requires payment on the less economical footing (*c*).

Where the liquidator **changes his solicitor**, and the assets are not sufficient to pay the whole of the costs, the bills of costs of the different solicitors will, as a general rule, be paid rateably, so far as the assets will extend (*d*).

In a case decided before 1890, where the remaining assets were insufficient to pay a former solicitor to the liquidator and also costs out of pocket incurred by the liquidator, the Court ordered such assets to be apportioned equally between them (*e*).

The solicitor has **no lien** on the file of proceedings in the winding-up, nor on the documents relating thereto (*f*). It is not clear whether the solicitor to the liquidator is entitled to claim a lien for his costs on a fund recovered in the winding-up of the company by his means (*g*); but, as to sums which were in the hands of the company before the commencement of the winding-up, or the general assets of the company, the solicitor has nothing to do with them (*h*).

Where the liquidator in England employs a solicitor upon the terms that he must look to the assets only for payment, he will be restrained from enforcing payment by attachment of assets, or otherwise his only right is to apply in the winding-up (*i*).

Costs of realization.—The general rule, where property

(*a*) *Anglo-Moravian Ry. Co.*, *supra*. See 53 & 54 Vict. c. 63, s. 12 (4).

(*b*) *Grand, &c., Trunk Ry. Co. v. Brodie*, 3 De G. M. & G. 146. And see *supra*.

(*c*) *United Kingdom Land and Building Assoc.*, 40 Ch. D. 471.

(*d*) *Audley Hall Cotton Spinning Co.*, L. R. 6 Eq. 245; 37 L. J. Ch. 904. See *Dominion of Canada Plumbago Co.*, *supra*.

(*e*) *Dominion of Canada Plumbago Co.*, *supra*.

(*f*) *Ex p. Pulbrook*, 4 Ch. 627.

See *Potter's Case*, 1 De G. & S. 728, decided under the old Acts, as to his lien. See *Phoenix Life Ass. Co.*, 1 H. & M. 433, as to costs where business unauthorized. See *Re Galland*, 31 Ch. D. 296, as to promotion expenses.

(*g*) *Cf. Union Cement Co.*, 20 W. R. 361 (where it was held that he was not); and *Re Massey*, 9 Eq. 367.

(*h*) *Ib.*

(*i*) *Hermann Loog (Limited)*, *Ramsay's Case*, 36 Ch. D. 502.

which is being realized in the winding-up is subject to incumbrances, has been that the liquidator's costs, charges, and expenses of realization must be paid in the first place, and then the incumbrancers are entitled to their principal, interests, and costs, in priority even to costs incurred by the liquidator in carrying on the company's business for the benefit of the creditors (a); the general costs of the winding-up coming last (b). The liquidator's **costs of preservation of the property** are, as between the incumbrancers and the company, payable by the company; but the liquidator is entitled to be indemnified out of the fund for so much of such costs as is not paid to him out of the company's assets (b).

Where, however, **part of the assets** had to be severed from the rest to answer the claim of a creditor, upon which claim there were many incumbrances, it was held that the liquidators were entitled to their costs, out of the fund, of appearing on a petition, with which they were served, for payment out of Court, but not their costs, charges, and expenses of investigating the claims, or of an abortive attempt at arrangement (c).

Under an agreement between the liquidator and the landlord of a company in liquidation that the liquidator should sell furniture, and pay the proceeds, "less the auction charges," into Court, the liquidator is not entitled to deduct his own costs and charges in carrying out the sale (d).

Costs which are not payable out of the assets.—The Court has no jurisdiction to order payment out of the assets of costs incurred by shareholders, not representing the company, who have commenced an action on their own responsibility, and continued it without obtaining leave (e).

Where a company has been finally dissolved, the costs of appearance of shareholders who appeared on a summons

(a) See *Ormerod, Grierson, & Co.*, W. N. 1890, p. 217.

(b) *Marine Mansions Co.*, 4 Eq. 601; *Re Oriental Hotels Co.*, 12 Eq. 126; *Regent's Canal Ironworks Co.*, *Ex p. Grissell*, 3 Ch. D. 411 (as to what is preservation); *Ex p. Leech, Re Barned's Banking Co.*, 6 Ch. 388. See *Hamilton's Ironworks Co.*, 27 W. R. 827, as to mortgagee's costs of attending

winding-up proceedings. As to a debenture-holder's action, and the order in which costs and other expenses must be paid, see *Batten v. Wedgwood Coal Co.*, 28 Ch. D. 317.

(c) *Bonelli's Electric Telegraph Co.*, 18 Eq. 656.

(d) *New City Constitutional Club Co.*, *Ex p. Purssell*, 34 Ch. D. 646.

(e) *Hull Central Drapery Co.*, 15 Ch. D. 326.

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by a creditor against the former liquidator were not allowed (a).

Nor can a solicitor of a creditor be allowed to take proceedings in the name of the company in order to get in assets to pay his own costs (b). And where an order was made in a winding-up directing that the applicant should receive his costs of the application out of the assets, it was held that there was no jurisdiction to give his solicitors leave to sue the directors in the name of the company for misfeasance (c).

A director is liable for costs of defending a suit to which he is made a party as director, and for costs of opposing a winding-up petition in his own name (d).

Where the solicitors to a company were retained by the directors to defend actions in respect of claims arising out of unauthorized business carried on by the company, and the defence to the actions was on the merits, and not by a plea of *ultra vires*, the solicitors could not prove for their costs against the assets, as they were considered to be the solicitors of the directors and not of the company (e).

Costs incurred by company in liquidation.—Where a company or liquidator is ordered to pay costs, such costs are payable in full out of the assets of the company in priority to the general costs of the winding-up (f), and are not to be proved as a debt in the winding-up (g); and execution for them will not be restrained where the action by the liquidators is in the name of the company (h).

Where, after a petition was presented, but before the winding-up order, judgment was obtained against a company by a creditor, the costs of the application and of the action were given after the liquidator's costs, although leave to issue execution was refused (i).

Security for costs from companies.—Where a *limited* company is plaintiff, and it appears that there is reason to believe that the assets of the company will be insufficient to pay the defendant's costs, the judge may require

(a) *Westbourne Grove Drapery Co.*, 27 W. R. 37.

(b) *Cape Breton Co. v. Fenn*, 17 Ch. D. 198.

(c) *Ib.*

(d) *Re Trueman's Estate*, 14 Eq. 278.

(e) *Phoenix Life Ass. Co.*, 1 H. & M. 433.

(f) *Supra*, p. 248.

(g) *Madrid Bank v. Pelly*, 7 Eq. 442; *Bailey and Leatham's Case*, 8 Eq. 94; *Ex p. Smith*, 3 Ch. 125; *Ferrao's Case*, 9 Ch. 355; *May's Case*, W. N. 1871, p. 18.

(h) *Ex p. Levick*, 5 Eq. 69.

(i) *Dimson's Fire Clay Co.*, 19 Eq. 202. See *Cape Breton Co. v. Fenn*, *supra*, and 17 Ch. D. 198, 205.

sufficient security to be given, and stay all proceedings in the meantime (a). In the absence of any reason to the contrary, the fact that the limited company is in liquidation is sufficient evidence upon which to obtain security (b). So, also, when there are cross-actions (c) or a counter-claim (d).

The Court has jurisdiction to order the liquidator to give security in an application under s. 10 of the Act of 1890 (e).

In interpleader proceedings instituted by a sheriff, a company which is being wound up may, although made defendants to the issue, be ordered to give security for costs (f).

The Court has now a judicial discretion to direct security for costs to be given at any time (g), even after notice of trial (h).

Notwithstanding some time has elapsed since the commencement of the action, if a new case, which would cause a considerable increase of expense, is raised by amendment, security for costs ought to be given (i).

The security for costs directed by s. 69 of the Act of 1862 is not limited by the amount fixed by the Court in the case of a plaintiff out of the jurisdiction, but the amount is now one of discretion, and is to be determined according to the particular circumstances of the case (k). Liberty may be given to renew an application in order to obtain further security (l).

(a) S. 69. See *Cailland's Tunning Co. v. Cailland*, 28 L. J. Ch. 357; 5 Jur. N. S. 259; *General Horticultural Co.*, 4 T. L. R. 13. As to waiver of right of security, see under the old practice, *Washoe Mining Co. v. Ferguson*, 2 Eq. 371; *Northampton Coal Co. v. Midland Waggon Co.*, 7 Ch. D. 500; and now R. S. C. 1883, O. 65 r. 6. As to when security will be ordered in a cross-suit, see *Accidental and Marine Insee. Co. v. Mercati*, 3 Eq. 200; *Washoe Mining Co. v. Ferguson*, *supra*; *City of Moscow Gas Co. v. International Financial Soc.*, 7 Ch. 225.

(b) *Isle of Wight and Southampton Steamboat Co. v. Rawlins*, 11 W. R. 978; *Northampton Coal, &c., Co. v. Midland Waggon Co.*, 7 Ch. D. 500. See *City of Moscow Gas Co. v. International Financial Soc.*, *supra*. As to a trustee in bankruptcy, see *Cowell v. Taylor*,

31 Ch. D. 34, dissenting from the observations in *Pooley's Trustee v. Whetham*, 28 Ch. D. 38.

(c) *Pure Spirit Co. v. Fowler*, 25 Q. B. D. 235.

(d) *Strong v. Carlyle Press* (2), W. N. (1893) 51.

(e) *Seventh East Central Building Soc.*, 51 L. T. 109. But see *infra*.

(f) *Tomlinson v. Land and Finance Corp.*, 14 Q. B. D. 539. See *Rhodes v. Dawson*, 16 Q. B. D. 548.

(g) R. S. C. 1883, O. 65, r. 6.

(h) *Lydney, &c., Iron Co. v. Bird*, 23 Ch. D. 358.

(i) *Northampton Coal, &c., Co. v. Midland Waggon Co.*, *supra*.

(k) *Imperial Bank of China, &c. v. Bank of Hindustan, &c.*, 1 Ch. 437. See now R. S. C. 1883, O. 65, r. 6.

(l) *Western of Canada Oil Co. v. Walker*, 10 Ch. 628.

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Bacon, V.C., ordered the liquidator of a building society established in conformity with the Building Societies Act, 1836, which was in course of being wound up, to give security for costs in certain proceedings taken by him against the late manager (*a*). But building societies established under the above Act, and not subsequently incorporated under the Act of 1874, have always been treated as "unlimited companies," and s. 69 of the Companies Act, 1862, relates only to limited companies. It is not clear which portion of the Companies Act, 1862, confers the "general jurisdiction" referred to by the Vice-Chancellor. Moreover, it has been decided (*b*), by the Court of Queen's Bench, that an unlimited company, although in liquidation and insolvent, cannot be ordered to give security under s. 69. The decision of Bacon, V.C., therefore, clashes with the last-mentioned case, but it is conceived that an unlimited company is not within the section.

Indemnity against costs.—Where a company covenants to indemnify another company, upon purchasing its business, against all claims, costs, and charges, and both companies are subsequently wound up, it seems that the latter company is not entitled to any indemnity with respect to the costs of its own winding-up (*c*); except as regards such part of the costs of winding-up the amalgamated company as have been incurred by a breach on the part of the former company of their covenant (*d*).

Scheme of reconstruction.—Upon a petition under the Joint Stock Companies Arrangement Act, 1870, the costs of all parties, except dissentient debenture-holders, have been ordered to be paid out of the estate (*e*).

See as to reconstruction generally, *post*, Part IV., p. 432.

Voluntary liquidation.—The Act of 1890 does not apply.

(*a*) *Seventh East Central Building Soc.*, 51 L. T. 109.

(*b*) *United Ports, &c., Insu. Co. v. Hill*, L. R. 5 Q. B. 395; *Rhodes v. Dawson*, 16 Q. B. D. 548, 555.

(*c*) *Per* Lord Cairns (Alb. Arb.), 16 Sol. J. 141; *Reil*, 17.

(*d*) *Per* Lord Westbury, in *British Nation Indemnity Claims* (Eur. Arb.), L. T. 4. See also (Eur. Arb.) L. T. 165.

(*e*) As to the liability of dissentient shareholders for the costs of winding-up after a sale of the com-

pany's property under s. 161 of the Act of 1862, see *Tunis Rys. Co.*, W. N. 1874, p. 121; *Marine Investment Co.*, 8 Ch. 702, 710. See *Imperial Merc. Credit Ass.*, 12 Eq. 504, as to costs of determining price under s. 162 of the dissentient shareholder's interest. As to a scheme being abortive, and costs not being given of a petition and procedure following thereon to creditors, see *Holden v. Scottish Heritable Security Co.*, 14 C. of S. Cas. 633 (Sc.).

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There is no difference in principle between the costs in a voluntary and a compulsory winding-up (*a*); although it is expressly provided in the case of voluntary liquidations that all costs, charges, and expenses properly incurred, including the remuneration of the liquidators, are payable out of the assets in priority to all other claims (*b*). This means in priority to all claims upon the company at the time of the winding-up (*c*). And therefore all the costs to which a person has been improperly put by adverse litigation will be ordered to be paid out of the assets in priority over the liquidator (*d*).

A creditor may bring an **action after a voluntary winding-up**, as he has no means of establishing his claim (*e*); but if he commences or proceeds with an action, he can only be admitted to prove for the costs of the action, and of the application to restrain execution, as an appendage to his debt (*f*). And a creditor-plaintiff in an action against a company in voluntary liquidation is not entitled to any priority in the winding-up for his costs of the action; he can only add them to his debt (*g*). But where a creditor, after notice of the winding-up and an offer to allow him to prove for his debt and costs, goes on with the action, he may not be allowed to add to his debt his costs of appearing on an application to stay proceedings (*h*). Indeed, he may be ordered to pay the company's costs (*i*).

Unregistered companies.—In winding up insurance companies, where the policies are payable only out of the funds of the company, the essence of the contract is that the funds inapplicable to prior claims, and remaining unapplied and undisposed of at the time of the making of the winding-up order, shall be liable to the policy-holders. The costs of the winding-up, the costs of settling the list of contributories, and the costs of recovering calls, are costs which ought to fall upon the company, that is to say, are costs which ought to be satisfied by further calls made upon the shareholders. If there are assets that require to

(*a*) *Per* Lord Cairns in *Webb v. Whiffin*, L. R. 5 H. L., at p. 735.

(*b*) S. 144. *Cf.* s. 110.

(*c*) See cases *ante*, p. 248, as to costs incurred by a company in liquidation.

(*d*) *Ib.*

(*e*) As to a compulsory winding-up, see *ante*, p. 58, *et seq.*

(*f*) *Poole Firebrick Co.*, 17 Eq. 268.

(*g*) *Thurso New Gas Co.*, 42 Ch. D. 486. See this case as to judgment not being obtained until after the resolution, and no priority being given.

(*h*) *Rose v. Gardden Lodge Coal Co.*, 3 Q. B. D. 235; *Walker v. Banagher Distillery Co.*, 1 Q. B. D. 129.

(*i*) *Freeman v. General Publishing Co* [1894], 2 Q. B. 380.

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be disposed of by sale, and costs are incurred in the sale, those costs would be deducted out of the sale moneys, and it would be the net sale moneys which would be applicable assets (*a*). But the doctrine of marshalling does not apply as between the policy-holders and the general creditors, and the former cannot claim any priority over the latter (*b*).

Where there were no shares in a mutual insurance association, it was ordered that the costs must be borne by payers and receivers *pro ratâ* according to the amounts to be paid or received by them respectively (*c*).

Where the liability was unlimited as to creditors generally, but limited as to policy-holders, and some contributories compromised their liabilities with the liquidator under s. 160, those contributories who had not compromised were held to be not entitled to require that the amounts received under the compromise should be marshalled between the liability for costs and the liability under policies, and they alone were held liable for the costs of liquidation (*d*). But where a charge upon calls given to the company's bankers was paid off from the limited assets, the policy-holders had no equity to have the assets marshalled, so as to throw any part of the bankers' debt upon the unlimited assets (*e*).

Appeal as to costs.—No order made as to costs only which are left to the discretion of the Court, is subject to any appeal, except by leave of the judge making the order (*f*). But if an order relating to costs involves a question of law and principle, an appeal will be allowed (*g*); and an irregular order is subject to appeal (*h*). Though s. 49 of the Judicature Act does not in terms apply to appeals from the Court of Appeal, yet the principle is the same (*i*).

A liquidator is entitled, as a rule, to his costs out of the

(*a*) *Agriculturist Cattle Ins. Co.*, 10 Ch. 1; *Professional Life Ass. Co.*, 3 Ch. 167; *State Fire Ins. Co.*, 34 L. J. Ch. 436; *English and Irish Church, &c., Soc.*, 1 H. & M. 79. See *Lethbridge v. Adams*, 13 Eq. 547.

(*b*) *State Fire Insce. Co.*, 1 H. & M. 457; 1 De G. J. & S. 634.

(*c*) *London Marine Ins. Ass.*, 8 Eq. 176. See *Preece and Evans's Case*, 2 De G. M. & G. 374.

(*d*) *Accidental Death Ins. Co.*, 7 Ch. D. 568.

(*e*) *International Life Ass. Soc.*,

2 Ch. D. 476; *Professional Life Ass. Co.*, *supra*.

(*f*) Jud. Act, 1873, s. 49. *Re Wainwright*, 19 Ch. D. 140.

(*g*) *Per James, L.J.*, *Re Rio Grande, &c., Co.*, 5 Ch. D. 282, 284; *Goodman v. Blake*, 19 Q. B. D. 77. See *per Jessel, M.R.*, *Re Chen-nell*, 8 Ch. D. 502; *Husley v. West London Ry. Co.*, 2 T. L. R. 765.

(*h*) *Wilmott v. Barber*, 17 Ch. D. 772.

(*i*) But see *Met. Asylum District v. Hill*, 5 App. Cas. 582, 584, *per Selborne, L.C.*

estate, and can therefore appeal against an order refusing him his costs (*a*).

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Taxation of costs.—Under the Act of 1890, see Companies Winding-up Rules, 1890, rr. 22–30, *post*, pp. 320–322.

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In cases to which the Act of 1890 does not apply (*b*), where an order is made in Court or chambers for payment of any costs, the order is to direct their taxation by the taxing-master; except in cases where a gross sum in lieu of taxed costs is fixed by the order in accordance with Cons. Ord. 40, r. 37 (*c*). That order provides that the Court may direct payment of a sum in gross in lieu of taxed costs; but it has been said that the costs will not be fixed except where the parties are poor, and anxious to put an end to the matter (*d*).

It is not the practice in the case of a company in liquidation to grant the common order to tax, making the liquidator offer to pay what shall be found due. In all cases where there is a liquidation, a special order is granted with no offer (*e*). It is the settled practice for a solicitor who has been employed by the company to carry in his bill of costs as a claim to be admitted by the liquidator in the usual way. If the amount is disputed, the bill is taxed in the ordinary way, and the solicitor adds his costs of taxation to his bill, and receives his dividend on the amount like any other creditor (*f*).

Although a case as presented to the Court may not be of special “difficulty” within the meaning of R. S. C. 1883, O. 65, r. 9, leave will be given to the taxing-master to tax all, or any part of the costs, on the **higher scale**, if it appears on such taxation that the difficulty was removed by the expenditure of time, money, and learned industry (*g*).

A bill is not taxable by the liquidator if at the date of the winding-up the company could not have insisted on

(*a*) *Silver Valley Mines*, 21 Ch. D. 381.

(*b*) See s. 31 of the Act of 1890, as to a winding-up under supervision, or winding-up commenced before 1st January, 1891.

(*c*) Gen. O. 1862, r. 72. See now R. S. C., O. 65, and O. 54, r. 9a (1888), as to taxation of costs, and O. 65, rr. 27, 38a. As to the costs of an appeal from the Stannaries Court being taxed by the taxing-master of the Chancery

Division, see *Spargo's Case*, 21 W. R. 306.

(*d*) *London and Blackwall Ry. Co. v. Limehouse Board*, 26 L. J. Ch. 164, at p. 170.

(*e*) *Re Brabant*, 23 Sol. J. (1879), p. 779.

(*f*) *Liverpool Household Stores Assoc.*, W. N. 1889, p. 48.

(*g*) *Fraser v. Province of Brescia Steam Tramways Co.*, 56 L. T. 771.

Chap.
XIV.

COSTS
IN THE
WIND-
ING-UP.

taxation (a). But the company's solicitor's bill of costs can be taxed by the liquidator in a winding-up, notwithstanding more than twelve months have elapsed since delivery (b); the effect of the winding-up order being to suspend the operation of the twelve months' rule, and the rights of all parties remain just as they were at the time of the winding-up (c).

(a) *Ex p. Quilter, Re James*, 4 De G. & S. 183.

(b) *Ex p. Evans*, 11 Eq. 151. As to the debt being allowed subject to taxation, see *Terrell v. Hutton*, 4 H. L. C. 1091. But see

Ex p. Quilter, Re James, 4 De G. & S. 183, where taxation was refused, but bill was delivered twelve months before winding-up.

(c) *Ib.*

PART II.

WINDING-UP BY THE COURT.

BEING THE WINDING-UP ACT, 1890, AND THE RULES
UNDER IT ANNOTATED.

THE COMPANIES (WINDING-UP) ACT, 1890, AND THE RULES (1890-1895).

COMPANIES (WINDING-UP) ACT, 1890.

53 & 54 VICT. c. 63.

1.—(1.) The courts having jurisdiction to wind up companies in England and Wales shall be the High Court, the chancery courts of the counties palatine of Lancaster and Durham, the county courts, and the Stannaries court.

S. 1.

Juris-
diction to
wind up
com-
panies.

(2.) Where the amount of the capital of a company paid up or credited as paid up exceeds ten thousand pounds, a petition to wind up the company or to continue the winding up of the company under the supervision of the court shall be presented to the High Court, or, in the case of a company situate within the jurisdiction of either of the palatine courts aforesaid, either to the High Court or to the palatine court having jurisdiction.

Where
capital
paid up,
&c.,
exceeds
£10,000.

(3.) Where the amount of the capital of a company paid up or credited as paid up does not exceed ten thousand pounds, and the registered office of the company is situate within the jurisdiction of a county court having jurisdiction under this Act, a petition to wind up the company or to continue the winding up of the company under the supervision of the court shall be presented to that county court.

Where
capital
paid up,
&c., does
not exceed
£10,000.

"County Court having Jurisdiction."—All County Courts which, at the time this Act came into operation, were excluded from jurisdiction in bankruptcy, have jurisdiction under this Act; Order of L. C. Nov. 90.

Metropolitan County Courts.—These Cts. being excluded from jurisdiction in bankruptcy, see Bank. Act (83), ss. 92, 93, their districts are attached to the H. C.: *The Court Bureau*, W. N. (1891) 15; 7 T. L. R. 223.

Claim by Company against Stranger.—There is no jurisdiction in the Cty. Ct. to decide a disputed claim between the company and a stranger which arose before the winding-up, analogous to B. A. 1883, s. 102: *Re Ilkley Hotel Co.* (1893), 1 Q. B. 248.

S. 1.

Petition to High Court when capital paid up less than £10,000.—Order to wind up made, and proceedings transferred to County Court under s. 3 : *Milford Haven Shipping Co.*, W. N. (1895) 16.

Proviso as to Stannaries.

(4.) Provided that where a company is formed for working mines within the Stannaries and is not shown to be actually working mines beyond the limits of the Stannaries, or to be engaged in any other undertaking beyond those limits, or to have entered into a contract for such working or undertaking, a petition to wind up the company or to continue the winding up of the company under the supervision of the court shall be presented to the Stannaries court whatever may be the amount of the capital of the company and wherever the registered office of the company is situate.

“**Stannaries Court.**”—Definition, s. 32, sub-s. 1. See also Stannaries Acts, 1869 and 1887.

“**Company formed for working mines within Stannaries.**”—See *New Terras Tin, &c., Co.* [1894], 2 Ch. 344, *ante*, Part I., Ch. II., p. 19.

Exclusion of Cty. Ct. by L. C.

(5.) The Lord Chancellor may by order exclude a county court from having jurisdiction under this Act, and for the purposes of such jurisdiction may attach its district, or any part thereof, to the High Court or to any other county court, and may revoke or vary any such order. In exercising his powers under this section the Lord Chancellor shall provide that a county court shall not have jurisdiction under this Act unless it has for the time being jurisdiction in bankruptcy.

“**May by Order exclude.**”—See Order of L. C., 29 Nov. 1890, made under this sub-section, and see *Re The Court Bureau*, cited sub-s. 3.

Transfer.—(S. 3.) There is no power to transfer the winding-up of a company from the H. C. to a Ct. which has no jurisdiction to wind up under the Act : *Re Real Estate* [1893], 1 Ch. 398.

Powers of Ct. having jurisdiction, &c.

(6.) Every Court having jurisdiction under this Act to wind up a company shall for the purposes of that jurisdiction have all the powers of the High Court, and every prescribed officer of the Court shall perform any duties which an officer of the High Court may discharge by order of the Judge thereof or otherwise in relation to the winding up of a company.

“**Powers of the High Court.**”—This gives the Ct. “having jurisdiction” all the powers of the C. D. if the matter was being dealt with there; or all the powers of the Q. B. D. if it were being dealt with there : *Ex parte Reynolds*, 15 Q. B. D., p. 188. See as to ordinary powers of Ct. under C. A. (62), ss. 98–114. Extraordinary powers, C. A. (62), ss. 115, 119. Powers of transfer, s. 3. Delegation of certain powers of H. C. to Liq., Act (90), s. 13.

Cf. also *Re Ilkley Hotel Co.* (1893), 1 Q. B. 248, cited s. 1, sub-s. 3 (n.).

The County Courts, however, must exercise these powers through their own officers. They cannot issue a writ of *fi. fa.* addressed to the sheriff of the county: *Re Bassetts Plaster Co.* [1894], 2 Q. B. 96.

SS. 2, 3.

(7.) Nothing in this section shall invalidate a proceeding by reason of its being taken in a wrong Court.

Proceedings in wrong Ct.

"Shall invalidate."—See *Re Buller, &c., Tin Co.*, Part I., Ch. II., p. 20. Proceedings may be either transferred to the proper Ct. or be retained, s. 3, and see *Re London & Suburban Bank* (1892), 1 Ch., p. 607; *Milford Haven Shipping Co.*, *supra*, n. to sub-s. 3.

If the petition is wilfully presented in wrong Ct., it would probably be dismissed, as in bankruptcy: *Re French*, 24 Q. B. D. 63.

2. Subject to general rules and to orders of transfer made under the authority of the Supreme Court of Judicature Act, 1873, and the Acts amending it, the jurisdiction of the High Court under this Act shall, as the Lord Chancellor may from time to time by general order direct, be exercised, either generally or in specified classes of cases, either by such Judge or Judges of the Chancery Division of the High Court as the Lord Chancellor may assign to exercise that jurisdiction, or by the Judge who, for the time being, exercises the bankruptcy jurisdiction of the High Court.

Conduct of winding up business in High Court.

"And to Orders of Transfer."—As to transfer where an order for winding up has been made, R. S. C., O. 49, r. 5, cited R. (Ap. 92) 14 (3). As to transfer under this Act, see s. 3.

"The jurisdiction of the High Court under the Act."—See s. 1. That section gives the H. C. jurisdiction, but does not say which Division is to exercise it. The G. O. 29 Nov. 1890, by the L. C., made under this section (2), gave it to the Judges of the C. D. to whom Chambers are attached. By G. O. 26 March, 1892, the L. C. assigned the business under the Act to Vaughan Williams, J.

Staying proceedings pending winding-up.—An application to stay an action where a petition has been presented must still be made in the Division in which the action is pending, for the power of *staying* is not a "jurisdiction under this Act," *Re General Service Co-operative Stores* [1891], 1 Ch. 496. See as to the *transfer* of any cause or matter pending in any Court or Division where order has been made to wind up, R. (Ap. 92) 14 (1), p. 316.

3.—(1.) The winding up of a company or any proceedings therein may at any time and at any stage, and either with or without application from any of the parties thereto, be transferred from one Court to another Court, or may be retained in the Court in which the proceedings were commenced, although it may not be the Court in which the proceedings ought to have been commenced.

Transfer of proceedings.

See **Rules**, *post*, pp. 314–317.

See **Forms**, *post*, p. 575.

S. 3.

"The Winding-up."—The petition may be transferred *before* an order to wind up is made thereon: *Re Laxon & Co.* [1892], 3 Ch. 31. The fact that it is doubtful whether the company was properly registered, or whether it is not an "unregistered" company, is good cause for transferring from County to High Court. *Ib.*

"Any proceedings therein."—The section applies in a voluntary winding-up: *Reg. v. East Stonehouse, infra.* As to actions by mortgagees or debenture-holders for realization of securities, or any action not brought to enforce payment of a debt or demand proveable in winding up, see R. (Ap. 92) 14 (3) (n.), p. 317.

An examination under s. 10 may be transferred from the High Court to the County Court: *Reg. v. East Stonehouse, &c.*, 65 L. T. 730.

A petition is included in the term "proceeding:" *Re Laxon, supra.*

"At any time and at any stage."—See *Re Laxon, supra.*

"Be transferred."—Proceedings are not to be invalidated by being taken in wrong Ct., see s. 1, sub-s. 7, but they may be transferred or retained. Petition to High Court; nominal capital, £250,000; paid-up capital, £101; order made, proceedings transferred to County Court: *Milford Haven Shipping Co.*, W. N. 1895, p. 16.

It would seem that the question of transfer should be decided on the principles by which the Cts. are guided in dealing with questions of venue, that is, will the matters be thereby more advantageously conducted and with more convenience to those principally interested, see *Ex parte Soanes*, 13 Q. B. D. 490, and R. (90) 8.

"From one Court to another Court."—There is no power to transfer the winding-up of a company to a Court which has been excluded by the Lord Chancellor from having jurisdiction: *Real Estates Co.* [1893], 1 Ch. 398.

Transfer of winding-up of Industrial Societies.—See *ante*, Part I., Ch. II., p. 12.

Transfer of winding-up of Building Societies.—See *ante*, Part I., Ch. II., p. 15.

By whom
powers of
transfer
may be
exercised.

(2.) The powers of transfer given by the foregoing provisions of this section may, subject to and in accordance with general rules, be exercised by the Lord Chancellor or by any judge of the High Court having jurisdiction under this Act, or, as regards any case within the jurisdiction of any other court, by the judge of that court.

"The Lord Chancellor."—By R. (90) 8, the power of transfer is given simply to the judge to whom the winding-up jurisdiction is assigned.

Special
case.

(3.) If any question arises in any winding-up proceeding in a county court or in the Stannaries court which all the parties to the proceeding, or which one of them and the judge of the court, may desire to have determined in the first instance in the High Court, the judge shall state the facts in the form of a special case for the opinion of the High Court, and thereupon the special case and the proceedings, or such of them as may be required, shall be transmitted to the High Court for the purposes of the determination.

"In the form of a special case."—No form is given in the Appendix of Forms, but see R. S. C., Order 34, r. 7, R. (90) 178. The Court may also exercise its power of transfer: *Re Laxon* [1892], 3 Ch. 35.

Building Society.—A judge of a County Court can state a special case hereunder for the determination of questions arising in the winding-up of a building society under the Act of 1874: *Re Portsea Island B. S.* [1893], 3 Ch. 205, decided before the Building Societies Act, 1894. *A fortiori*, such a special case can be stated now. For the Building Societies Act, 1894, see *ante*, Part I., Ch. II., p. 14. In any case of difficulty, application to transfer to the High Court should be made.

"For the opinion of the Court."—Possibly this will be one of the matters which under R. (92) 3 (1) (e), p. 310, the Judge will direct to be heard in open Ct.

4.—(1.) On an order being made by the court for winding up a company the officer herein-after mentioned shall, by virtue of his office, become the provisional liquidator of the company, and shall continue to act as such until he or another person becomes liquidator and is capable of acting as such.

"On an order . . . for winding up," &c.—A supervision order is not such an order, s. 31 (2).

"Provisional liquidator."—This term was not used in the Act of 1862. There is a distinction drawn here between a "*provisional liquidator*" and a "*liquidator*," and this is preserved in a later clause (3), *per* Lindley, L.J., *Re N. W. Gunpowder Co.*, *infra*. *Semble*, until the winding-up order is *perfected*, the O. R. does not become Prov. Liq.; see *Re South Metrop. Brewing, &c., Co.*, W. N. (91) 51. When the Official Receiver is acting as Provisional Liquidator, he is "*liquidator*" *prima facie*, within R. (90) 83-88, and may settle the list of contribs.: *Re English Bank, &c.* (1892), 1 Ch. 391.

In the *Washington Diamond Co.*, the C. A. on making a winding-up order (Lindley, L.J., in *Re N. W. Gunpowder Co.*, refers to this case as "*an application in a debenture-holders' action*") appointed II., a chartered accountant, liquidator, ordering him to give security to satisfaction of Board of Trade. The case, otherwise unreported, is referred to *Re N. W. Gunpowder Co.*, *infra*.

But in *Re N. W. Gunpowder Co.* [1892], 2 Q. B. 220, the C. A. held that *after a winding-up order has been made*, the Ct. has no power to appoint a Prov. Liq. *other than the O. R.*

Before winding-up order a person other than the Official Receiver can be appointed. See (n.) to sub-s. 6 of this section.

"To act as such."—The powers of the "*provisional liquidator*" are not expressly defined by the Act; they have to be made out by putting the various sections of the Act together and comparing them (*Re English Bank, supra*). As to his power to examine and reject proofs, &c., see R. (90) 115, which gives him express powers as Prov. Liq.; but in other cases he would seem to have all the powers expressly given to the O. R. and some of those given to the Liq. As to limiting his powers, cf. *Re Mercantile Bank of Australia*, cited sub-s. 5, *infra*; as to his right to books and documents, see *Engel v. S. M. Brewing, &c., Co.* [1892], 1 Ch. 442.

"Until he or another person," &c.—See s. 6, sub-s. 1 (a).

(2.) The said officer shall be the official receiver, if any attached to the Court for bankruptcy purposes, or if there

S. 4.

On winding-up order made "official receiver" becomes "provisional liquidator."

"Official receiver."

S. 4.

is more than one such official receiver, then such one of them as the Board of Trade may appoint, or, if there is no such official receiver, then an officer appointed for the purpose by the Board of Trade. Any such officer shall for the purpose of his duties under this Act be styled the official receiver.

"The Official Receiver."—See R. (90) 2.

Forms.—See pp. 496, 517–536.

"Liquidator" *not*
"official
liquidator."

(3.) When a person other than the official receiver is appointed liquidator of a company he shall be styled liquidator and not official liquidator of the company, and the provisions of the Companies Acts relating to the official liquidator shall, in their application to him, be construed as if the word "official" were omitted therefrom. Such a person shall not be capable of acting as liquidator until he has notified his appointment to the registrar of joint stock companies and given security in the manner prescribed to the satisfaction of the Board of Trade. He shall give the official receiver such information and such access to and facilities for inspecting the books and documents of the company, and generally such aid, as may be requisite for enabling that officer to perform his duties under this Act.

Forms.—See pp. 517, 518.

Rules.—See pp. 340–342.

"Liquidator."—"Liquidator" here does not apply to a Prov. Liq., *per* Lindley, L.J., *Re N. W. Gunpowder Co.* (1892), 2 Q. B. 223. See (n.) "Provisional Liquidator," sub-s. 1, *supra*.

Proceedings in name of Liquidator.—In *Harrison v. St. Etienne, &c., Co.*, 37 Sol. Jo. 562, Vaughan Williams, J., said that as a general rule the person in whose name proceedings had to be taken should be "dominus litis," and, therefore, where proceedings have to be taken in the name of a liquidator, an application should be made that the proceedings be taken by the Liq. himself; and see Part I., Ch. V., p. 62.

Vacancy
in office of
liquidator.

(4.) If any vacancy occurs in the office of liquidator of a company, the official receiver shall, by virtue of his office, be the liquidator during the vacancy.

Rules.—See R. (90) 65.

See *Re Stamford Banking Co., &c.*, 26 L. T. N. of C. 38.

A liquidator may be removed from office on due cause shown, 1862 Act, s. 93. On "due cause" means "where there is some unfitness in the wide sense of the term:" *Sir John Moore Gold Mining Co.*, 12 C. D. 325. It is not necessary to show personal misconduct, but it must be desirable in the interests of the liquidation that the particular person should not be liquidator: *Adam Eyton, Ltd.*, 36 C. D. 299; *Oxford Building, &c., Co.*, 49 L. T. 495; and see other cases, *post*, Part III., Ch. I., Voluntary Winding-up, p. 408.

(5.) The official receiver may be appointed by the court provisional liquidator of the company at any time after the presentation of the petition and before a winding-up order has been made.

C. A. (62), s. 85.

"May be appointed Provisional Liquidator."—See (n.) "Provisional Liquidator," p. 267.

This sub-section does not mean that the O. R. should in all cases be prov. liq. *before* a winding-up. It enables the Ct. *if it thinks fit* to appoint the O. R.: *Re N. W. Gunpowder Co.* [1892], 2 Q. B., p. 224. The normal course is to appoint the O. R., but the Ct. has power to appoint another person (*Re Unionist Club*, W. N. (91), p. 64); or another person jointly with O. R.: *Re Mercantile Bank of Australia* [1892], 2 Ch. 204. North, J., in last-mentioned case, after petition presented and *before* winding-up order, appointed the manager of the company in England, and *another*, Prov. Liq., and ordered them to give security, thinking that this Act did not apply. The B. of T., however, thought that this Act applied; that R. (90) 67 did *not* apply before a winding-up order had been made, and also that the Ct. could under this sub-section only appoint the O. R. as Liq. (see and consider R. (90) 32 (1) (2), p. 324). It was subsequently decided that the *normal course* of appointing the O. R. alone as Prov. Liq. had better be followed, limiting his powers (see the Form No. 24, p. 496) to taking possession of, collecting and protecting the assets of the company, paying thereout current rents and salaries, &c., but not further distributing the assets.

The usual course now, where there is a business to be carried on, is to appoint the official receiver, and to restrict his powers to making application to the Ct. for the appointment of some one as special manager: *Re Bound*, W. N. (93) 21.

A Prov. Liq. appointed under C. A. (62), s. 85, is considered only a receiver *pendente lite*, and is not entitled to costs on appearance even though served: *General International, &c., Co.*, 13 W. R. 363.

"Before a winding-up order."—*After* a winding-up order has been made, the O. R. becomes Prov. Liq., s. 4, sub-s. 1.

(6.) Where an application is made to the Court to appoint a receiver on behalf of the debenture-holders or other creditors of a company the official receiver may be so appointed. Receiver.

"A Receiver on behalf of Debenture-Holders," &c.

When a receiver or manager will be appointed, see Part VI., Ch. I., *post*, p. 471. *Duties and liabilities of such a receiver or manager*, see Part VI., Ch. II., *post*, p. 476.

A mortgagee is entitled to have his security protected, if it is in jeopardy. In an action by debenture-holders whose security was a charge on the property and assets of the company, a petition for winding-up presented by a creditor had been adjourned; the plaintiff moved for appointment of a receiver, although the interest on the debentures was not in default, on the ground that actions had been commenced and threatened against company. The Ct. appointed a receiver: *McMahon v. N. Kent, &c., Co.* (1891), 2 Ch. 148; *Stubber v. Daniel*, 36 Sol. Jo. 744; *Lathom v. Greenwich, &c., Co.*, 93 L. T. Jo. 458; *Oppert v. London, &c., Asson.*, 93 L. T. Jo. 458; *Deb. Corp. v. Birkin*, 93 L. T. Jo. 458.

S. 4.

—
Appoint-
ment of
prov. liq.
before
winding-
up order.

S. 4.

In *Edwards v. Standard, &c.* (1893), 1 Ch. 574, a debenture-holder's action, nothing was due on the security. North, J., on authority of *Willday v. Mid Hants Ry. Co.*, 16 W. R. 409, and with the company's consent, and on evidence that execution had been levied, appointed a receiver; and, on the authority of *Makins v. Percy-Ibotson* (1891), 1 Ch. 133, a manager.

"**The O. R. may be appointed.**"—In *Strong v. Carlyle Press* [1893], 1 Ch. 268, a petition to wind up was presented, 30 Sept., 1892; on 10 Oct. the O. R. was appointed Prov. Liq.; on the 11th debenture-holders commenced an action, and on the 14th a receiver was appointed in that action; on the 25th a compulsory winding-up order was made and the O. R. continued as Prov. Liq.; on the 28th an order was made giving leave for action to be continued, and continuing receiver. The action was then transferred to Vaughan Williams, J., and the O. R. took out a summons to discharge the receiver, and the application was granted. The C. A. discharged the order, for *the debenture-holders, whose interest was in arrear, were outside the winding-up, their security was in peril, and they had a right to a receiver.* See further, *Securities, &c., Co. v. Brighton Alhambra*, 68 L. T. 249; *Engel v. S. M. Brewing, &c., Co.* [1892], 1 Ch. 442.

As a general rule of convenience where a winding-up order had been made and an application was made in a debenture-holder or mortgagee's action, for the appointment of a receiver, and also an application in the winding-up for the appointment of a Liq., the Ct. would appoint a Liq. to act in both capacities. And where either before or after a winding-up order debenture-holders or mortgagees had obtained an order appointing a receiver, and subsequently a Liq. was appointed, the Ct. would ordinarily in the exercise of its discretion appoint the Liq. in the place of the receiver to act in both capacities: *Re Joshua Stubbs* [1891], 1 Ch. 475.

In the *British Linen Co. v. South American, &c., Co.* [1894], 1 Ch. 108, a debenture-holders' action was commenced on July 26, 1893. August 2 order made appointing a receiver and manager. July 24, 1893, petition to wind up the defendant company presented, and on August 2 a compulsory order made. O. R. and Prov. Liq. of the defendant company now moved in the action to discharge the order of August 2, 1893, he undertaking, if so required, to keep a separate account on behalf of the debenture-holders of the company of any assets received by him as such provisional liquidator; or, in the alternative, that he might be appointed receiver and manager, or receiver in the action in the place of or jointly with the receiver and manager appointed by the order of August 2, 1893. The debentures were a charge upon the uncalled capital of the defendant company. The directors of the company had, before the commencement of the action, made a call in respect of the amount unpaid on the shares, and a considerable part of the money payable under that call was still unpaid. There was also capital which was still uncalled, and the assets of the company would be more than sufficient to meet the claim of the debenture-holders. Williams, J., said that *it was settled that the Court ought not by reason of there being a liquidation to interfere with the rights of debenture-holders further than was necessary to do complete justice to all parties.* But the cases of *Perry v. The Oriental Hotels Company*, 5 Ch. 420, and *In re Joshua Stubbs* [1891], 1 Ch. 475, showed that the rule of the Court in general was, *where there was a debenture-holders' action and a liquidation, to appoint the liquidator to be receiver in the action, the reason being that the liquidator and the receiver in the action having duties to perform which would be identical if both were continued, there would be extra expense and unnecessary conflict, and the Court preferred to appoint the liquidator to perform the duties, he being an officer of the*

Court who would, *primâ facie*, do equal justice between the parties. That, however, was only a *primâ facie* rule of practice which might be easily displaced if there were any ground for supposing that the rights of the debenture-holders would be affected by adhering to it. The official receiver was not always the most appropriate person to realize the assets of a business. In cases, for instance, where there was a business to be carried on, or transactions had to be entered into which involved buying or selling, or where money had to be borrowed to put the property into condition for sale, the O. R. might not be able to act so well as a commercial liquidator. The debenture-holders, too, had not apparently an exclusive interest in the property, and there was uncalled capital to collect. He discharged the order of August 2, and appointed the O. R. to be receiver in the action upon the terms of his giving the undertaking referred to. The principle laid down in this case was subsequently approved by the C. A., but the order was varied, as new evidence showed that the assets could be collected better by a *mercantile Liq.*

Debenture Action. Summons for calls, title of.—If it becomes necessary to make calls after a winding-up order, for the benefit of debenture-holders (the uncalled capital being included in the debentures), the summons should be intituled in the winding-up, as well as in the action, and the applicant must indemnify the O. R. against costs: *Fowler v. Broads, &c., Co.* [1893], 1 Ch. 724. In such a case all the Ct. can do is to order the Liq. to make the call in the *winding-up*.

Foreign undertaking. Agent appointed.—See *Morton, Rose, &c., v. Barbadoes*, 37 Sol. Jo. 729.

See also *post*, Part VI.

5.—(1.) Where the official receiver becomes the liquidator of a company, whether provisionally or otherwise, he may, if satisfied that the nature of the estate or business of the company, or the interests of the creditors or contributories generally, require the appointment of a special manager of the estate or business of the company other than himself, apply to the court to, and the court may on such application, appoint a special manager thereof during such time as the court may direct, with such powers, including any of the powers of a receiver or manager, as may be entrusted to him by the court.

Special manager power to appoint.

Rules.—See pp. 335, 342, 343.

Forms.—See pp. 519, 526.

“Where the O. R. becomes the Liquidator.”—On a winding-up order being made the O. R. “becomes” *Prov. Liq.* “by virtue of his office,” s. 4 (1). Then, in case no one else is appointed under s. 6, he “becomes” liquidator, s. 6, sub-s. 3, under style of “Official Receiver and Liquidator,” R. (90) 66. He may, *before* winding-up order, be *appointed* *Prov. Liq.* under s. 4, sub-s. 5, and this is sometimes done to enable him to apply hereunder: *Re Bound*, W. N. (93) 21.

“He may require.”—Cf. *Re Whittaker*, 50 L. T. 510. An application to the O. R. to apply must be supported by affidavit in form to be obtained at office.

“Special Manager.”—Official Receivers are not trained to carry on every kind of business, and it may be very important in some cases to have some skilled man to manage a business which an official is incompetent to do, *per C. A., Re N. W. Gunpowder Co.* [1892], 2 Q. B. 224.

SS. 5, 6.

Receiver for debenture-holders appointed receiver for judgment creditor. To save unnecessary expense the debenture-holders' receiver may be appointed to act as receiver for a judgment creditor: *Minter v. Kent, Sussex, and General Land Society*, 11 T. L. R. 197.

Order to wind up a company carrying on business as butchers and fishmongers. The O. R. was to be at liberty if he thought fit to carry on the business of the company, so far as necessary for purpose of winding-up, until further order. This the Ct. thought would give him power to appoint a *deputy* to manage the business, and he could apply again if he wanted a Sp. Man.: *Re General Service Co-op., &c.* (No. 2), 64 L. T. 228; and see *Re Bound*, W. N. (93) 21, cited s. 4. See also Part VI.

Security by.

(2.) The special manager shall give such security and account in such manner as the Board of Trade direct.

Rules.—See pp. 342, 343.

Forms.—See pp. 517, 518.

Remuneration of.

(3.) The special manager shall receive such remuneration as may be fixed by the court.

But the O. R. is to state what in his opinion should be allowed, and the order should state the sum allowed, R. (90) 42.

First meeting of creditors and contributories.

6.—(1.) When the court has made an order for winding up a company the official receiver shall summon separate meetings of the creditors and contributories of the company for the purpose of—

Rules.—See pp. 335, 336, 340-342.

Forms.—See pp. 510-512.

“**Has made.**”—As to calling meetings before order made, see C. A. (62) s. 91.

“**An Order for Winding up.**”—*I.e.* not a supervision order, see Act, s. 31 (2).

“**The Official Receiver.**”—He being then “Provisional Liquidator,” s. 4.

Appointment of liquidator.

(a) determining whether or not an application is to be made to the court for appointing a liquidator in the place of the official receiver; and

Rules.—See pp. 335, 336, 340-342.

Forms.—See pp. 510-512.

“**A Liquidator in place of O. R.**”—If a person *other than O. R.* is appointed he cannot act until he has notified his appointment and given security as provided by s. 4, ss. 3. The words “in the place of” do not mean “other than:” *Re Johannisberg, &c.* [1892], 1 Ch. 583, cited *infra*.

If the Court does not approve of the nominee of the meeting, the Court may—

(1) Appoint another outside liquidator.

(2) Leave the O. R. to be liquidator.

(3) Direct a further meeting to be held: *Charles Reynolds & Co.*, W. N. (1895) 31.

If the creditors (or contributories) do not at the meeting deal with the question whether an outside liquidator shall be appointed, the Court can order the *first* meeting to be re-summoned. *Ib.*

(b) determining whether or not an application is to be made to the court for the appointment of a committee of inspection to act with the liquidator, and who are to be the members of such committee if appointed. SS. 6, 7.

“Committee of Inspection.”—See s. 9.

The court may make any appointment and order required to give effect to any such determination, and if there is a difference between the determinations of the meetings of the creditors and contributories in respect of any of the matters mentioned in the foregoing provisions the court shall decide the difference and make such order thereon as the court may think fit.

Rules.—See pp. 335, 336, 340-342.

Forms.—See pp. 510-512.

“May make any Appointment and Order,” &c.—In *Re Johannisberg Gold, &c., Co.* [1892], 1 Ch. 583, Chitty, J., held that the term “unanimous” meant not a unanimity of the two meetings, but the unanimity of all creditors and contribs.; that the duty of the Ct. was not merely to register the determination of the meetings, but to exercise a discretion, and he declined to appoint the liquidator nominated by the creditors, leaving the O. R. to complete the distribution of the assets under sub-s. (3).

“And if there is a Difference.”—See *Re Johannisberg, &c., Co.*, *supra*; *Land Development, &c., Co.* [1892], 2 Ch. 138; *Re Bloxwich Iron, &c., Co.*, 38 Sol. Jo. 546; and see now the new Rule (April, 1895), *post*, pp. 340, 341.

(2.) The provisions of the First Schedule to this Act shall, subject to such modifications as may be made therein by general rules, apply to any meeting summoned in pursuance of this section.

Schedule.—See pp. 298-304.

Rules.—See pp. 336-339.

(3.) In case a liquidator is not appointed by the court the official receiver shall be the liquidator of the company. “Official receiver and liquidator.”

“The Official Receiver shall be.”—The O. R. then takes the style of “Official Receiver and Liquidator,” R. (90) 66, p. 342. In *Engel v. S. Met. Brewing, &c., Co.* [1892], 1 Ch. 443, the O. R. seems to have been appointed by order permanent O. L., and the custody of all documents, except title deeds, given to him as against receiver and manager in debenture-holders’ action.

“I am not prepared to say,” said Lindley, L.J., in *N. W. Gunpowder Co.* [1892], 2 Q. B., p. 224, “that these words are confined to cases where the Ct. proceeds upon the request of the meetings. The language is very general, and that language makes me cautious in saying that the Ct. cannot appoint one without such request.”

7.—(1.) Where the court has made an order for winding up a company, there shall be made out and submitted to State-ment of

S. 7.

com-
pany's
affairs.

the official receiver a statement as to the affairs of the company in the prescribed form, verified by affidavit, and showing the particulars of the assets, debts, and liabilities of the company, the names, residences, and occupations of the creditors of the company, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the official receiver may require.

Rules.—See pp. 339, 340.

Forms.—See pp. 499–509.

Formerly it was the practice not to call the first meetings until the statement of affairs had been submitted, R. (90) 45. This rule is now annulled, see *post*, p. 336.

“An Order for Winding up.”—Not a supervision order, s. 31, sub-s. 2.

Effect of in Bankruptcy.—As to its not being an admission against interest, *Re Tollemache*, 14 Q. B. D. 415. Such an acknowledgment does not take it out of Stat. of Lim., *Everett v. Robertson*, 28 L. J. Q. B. 23.

Persons
who are to
submit
and verify
statement.

(2.) The statement shall be submitted and verified by one or more of the persons who are at the time of the winding-up order the directors and by the person who is at that time the secretary or other chief officer of the company, or by such of the persons being or having been directors or officers of the company or having taken part in the formation of the company at any time within one year before the order for winding up the company, as the official receiver, subject to the direction of the court, may require to submit, and verify the same.

Rules.—See pp. 339, 340.

Forms.—See pp. 499–509.

Time for
submit-
ting state-
ment.

(3.) The statement shall be submitted within fourteen days from the date of the order, or within such extended time as the official receiver or the court may for special reasons appoint.

“Within Fourteen Days.”—As to extension of time, see R. (90) 59.

Payment
for pre-
paration
and
making
up.

(4.) Any person making or concurring in making the statement and affidavit required by this section shall be allowed, and shall be paid by the official receiver, out of the assets of the company, such costs and expenses incurred in and about the preparation and making of such statement and affidavit as the official receiver may consider reasonable, subject to an appeal to the court.

Rules.—See pp. 323, 339, 340.

Default in
comply-

(5.) If any person, without reasonable excuse, makes default in complying with the requirements of this section,

he shall be liable to a fine not exceeding ten pounds for every day during which the default continues. **SS. 7, 8.**

Contempt, committal for.—Instead of applying for a fine which involves proceedings by information in the Q. B. D., application is usually made for an order to enforce this section, and if not complied with, application for committal for contempt is then made. Applications for such orders should be made to the judge in person, not the registrar: *Columbian Gold Mines*, 42 W. R. 624.

ing with
section.

Report to Court of Default.—See R. (90) 61, p. 340.

(6.) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled by himself or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof or extract therefrom. But any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of court and shall be punishable accordingly on the application of the liquidator or of the official receiver.

Right to
inspect
statement.

"Any Person untruthfully," &c.—"Person" includes body corporate, *Interp. Act*, 1889, s. 2.

"Contempt."—Applications to commit for contempt to be heard in open Court, see R. (Ap. 92) 3, 1 (d), p.

"To inspect."—There does not appear to be a fee prescribed for inspection under *this* section, as under s. 15.

8.—(1.) Where the court has made an order for winding up a company, the official receiver shall, as soon as practicable after receipt of the statement of the company's affairs, submit a preliminary report to the court—

Preliminary
report.

Rules.—See p. 344.

Forms.—See pp. 512-515.

Deposition taken at public examination may be used in proceedings under s. 10, R. (92) 27, p. 346. See *Re London and General Bank*, 38 Sol. Jo. 682.

General effect of Section.—This section assists the Ct. in ordering a compulsory winding-up if the petitioner, creditor, or contrib. makes out a *case for investigation*; see *ante*, Part I., Ch. III., p. 25.

C. A. 62, s. 115.—In some respects these sections are alike. But the great difference between them is that the latter has for its object to give the Ct. information upon matters upon which it has none. The Ct. under that section can act on mere suspicion; under this, only on a *prima facie* case being made out. But neither section gives anybody any right to obtain an order for examination. The making of such an order is entirely the act of the Ct.: *Re Great Kruger Gold, &c., Co.* [1892], 3 Ch. 307, explained in *Trusts Investment, &c., Corp.* [1892], 3 Ch. 332, and see sub-s. 3 (n.), "The Court may," &c.

In *Re New Zealand Loan, &c., Co., infra*, the directors were let off with an examination founded partly on this s. 8, and partly on s. 115. See 38 Sol. Jo. 335.

"An Order for Winding up."—Not a supervision order, s. 31 (2).

S. 8.

- (a) as to the amount of capital issued, subscribed, and paid up, and the estimated amount of assets and liabilities; and
- (b) if the company has failed, as to the causes of the failure; and
- (c) whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation, or failure of the company, or the conduct of the business thereof.

Further
report.

(2.) The official receiver may also, if he thinks fit, make a further report, or further reports, stating the manner in which the company was formed and whether in his opinion any fraud has been committed by any person in the promotion or formation of the company or by any director or other officer of the company in relation to the company since the formation thereof, and any other matters which in his opinion it is desirable to bring to the notice of the court.

“**Further report.**”—A Further Report in writing is necessary to justify an order under sub-s. 3. But the report should not contain anything like an indictment, or a definition of charges against the person to be examined, see sub-s. 3.

The sub-section does not mean more than that the official receiver shall state that, on the information before him, uncontradicted and unexplained, he is of opinion that a *prima facie* case is made of fraud having been committed by some person—not necessarily naming any person—falling within the description of persons mentioned in the sub-section, and that he believes such information to be true: *General Phosphate Corporation* [1895], 1 Ch. 3. There is no jurisdiction to order a public examination unless the official receiver either states expressly in his further report that in his opinion some fraud has been committed, or the facts which are stated in the report show clearly that in his opinion such a fraud has been committed; if the report merely suggests or gives rise to a suspicion of fraud, this is not enough: *General Phosphate Corporation, supra*; *Great Kruger Gold Mining Co.* [1892], 3 Ch. 307; *Trust and Investment Corporation* [1892], 3 Ch. 332; *Laxon & Co.* (3) [1893], 1 Ch. 210; *Birkdale Steam Co.* [1893], 2 Q. B. 388; *New Zealand Loan, &c., Co.*, 71 L. T. 130. Where the Court has jurisdiction to make, and has exercised its discretion by making an order, it will not be discharged on the ground that fraud is not sufficiently shown by the official receiver's report: *New Travellers' Chambers Co.* [1895], 1 Ch. 395. The Court will not order the report to be taken off the file or admit evidence to rebut the charge of fraud thereby made: *ib.*

Public
examina-
tion.

(3.) The court may, after consideration of any such report, direct that any person who has taken any part in the promotion or formation of the company, or has been a director or officer of the company, shall attend before the court on a day appointed by the court for that purpose, and be publicly examined as to the promotion or formation of the company, or as to the conduct of the business of

the company, or as to his conduct and dealings as director or officer of the company.

Rules.—See pp. 344-347.

Forms.—See pp. 512-513.

"The Court may, after consideration."—The application hereunder may be "ex parte," upon the "further report" of the O. R. under sub-s. 2, which see. The person ordered to be examined may apply to have the order discharged, but only on the ground that he is not one of the persons mentioned in the sub-section: *Re Trust, &c., Corp., Re Bertram, &c.* [1892], 3 Ch. 332. The consideration of the preliminary report (and "further report"?) must be before the Judge of the Ct. personally in chambers, R. (90) 71.

"Of any such report."—*I.e.* the "further report" or reports mentioned in sub-s. 2: *Re Trust, &c., Corp.*, and *Re Bertram, supra*. This section does not contemplate a fishing inquiry; if, therefore, in the report, nothing appears to show that the persons to be examined had anything to do with the promotion or formation of the Co., the order should not be made: *Re Great Kruger, &c., Co., infra*. See (n.) "Further report," *supra*, sub-s. 2.

The Court, after an examination under s. 115 of C. A. (62), may direct an examination hereunder. As to s. 115, see *ante*, Part I., Ch. XI.

Service of order out of Jurisdiction.—There is no power under B. A., and *semble* none hereunder, or under R. S. C., to order service of this order out of the jurisdiction: *Re Wendt*, 22 Q. B. D. 733.

In *Re Great Kruger, &c.* [1892], 3 Ch. 307, B., who was not a promoter, director, or officer of the company, but only a subscriber for shares, was ordered to attend for examination hereunder. The Ct. directed a further report to be made, showing how B. was so connected with the affairs of the company that he ought to be examined.

"And be Publicly examined."—Under B. A., 1869, s. 96, the trustee was entitled to prepare for the public examination by a previous one in private: *Re Hendrey*, 1 C. D., p. 533. Cf. (n.) "C. A. (62), s. 115," p. 275.

In *Re Vansittart* [1893], 1 Q. B. 181, a case in Bankruptcy, it was held that although the O. R. had a right to certain information, which the person examined refused to give because his answer might prejudice him in an action brought against him by the petitioning creditor, it ought not to be used against him for a purpose foreign to the examination, and the examination was allowed to proceed only on the terms of the action being stayed.

(4.) The official receiver shall take part in the examination, and for that purpose may, if specially authorised by the Board of Trade in that behalf, employ a solicitor with or without counsel.

Official receiver to take part in examination or the "liquidator."

The O. R. *must* take part in examination, the *Liq. may*, sub-s. (5).

(5.) The liquidator where the official receiver is not the liquidator and any creditor or contributory of the company may also take part in the examination either personally or by solicitor or counsel.

"By Solicitor."—Comp. B. A., s. 17, sub-s. 4, which requires the authorization of the creditors' representative to be in writing: *Reg. v. Registrar, &c.*, 15 Q. B. D. 54.

S. 8.

As to the right of a solicitor to take notes, cf. *Re Power*, a case of bankruptcy in the Cty. Ct., Manchester, 95 L. T. Jo. 103.

Court
may put
questions.

(6.) The court may put such questions to the person examined as to the court may seem expedient.

"The Court."—The Ct. means the Judge or other officer of the Ct. exercising the powers of the Ct. pursuant to the Act and Rules, R. (90) 2. The Ct. in sub-s. 3, *supra*, means the Judge in person (?), R. (90) 71, p. 344, and perhaps also in sub-s. 9. But in this sub-section, and sub-ss. 7 & 8, it means the Reg. or the person mentioned in sub-s. 9; see sub-s. 9, R. (Ap. 92) 26 (a), p. 345.

"May put."—Or, allow to be put; see next sub-section.

The
person
examined,
his duties
and
rights.

(7.) The person examined shall be examined on oath, and it shall be his duty to answer all such questions as the court may put or allow to be put to him. The person examined shall at his own cost, prior to such examination, be furnished with a copy of the official receiver's report, and shall also at his own cost be entitled to employ at such examination a solicitor with or without counsel, who shall be at liberty to put such questions to the person examined as the court may deem just for the purpose of enabling that person to explain or qualify any answers given by him. Provided always, that if such person is, in the opinion of the court, exculpated from any charges made or suggested against him, the court may allow him such costs as the court in its discretion may think fit. Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him. They shall also be open to the inspection of any creditor or contributory of the company at all reasonable times.

Notes of
examina-
tion to be
taken.

Whether a person examined hereunder is a mere witness and so entitled to refuse to answer questions that may criminate him, or whether he is in a position analogous to a bankrupt and so under a personal obligation to answer all questions, *quære*, and see *Re Firth*, 6 C. D. 230; *Lamb v. Munster*, 10 Q. B. D. 111.

"The Court."—See this (n.) sub-s. 6.

"Notes at Examination."—These depositions taken at a public examination hereunder may be used in evidence on proceedings under s. 10, R. (Ap. 92) 27, p. 346. The deposition will be treated as an affidavit and be subject to cross-examination: *Re London and General Bank*, 38 Sol. J. 682. As to the right of a solicitor to take notes under similar proceedings in bankruptcy, see *Re Power*, 95 L. T. Jo. 103.

"Open to Inspection," &c.—Compare proviso as to inspection of statement, s. 7, sub-s. 6, and s. 15.

Adjourn-
ment of

(8.) The court may, if it thinks fit, adjourn the examination from time to time.

"May Adjourn."—Cf. *Re Hendrey*, 1 C. D. 530. Probably the Ct. will adjourn the examination on the request of the O. R. on the ground that he is entitled to have full time to investigate the facts of the case, cf. *Ex p. Milne*, 21 W. R. 436; also, perhaps, having regard to s. 10, upon the application of a creditor, or contrib. The Reg., &c., may also adjourn it to the Judge if he thinks it unnecessarily protracted, R. (Ap. 92) 26 (c), p. 345, and see R. (90) 6.

SS. 8, 9.

examination.

(9.) A public examination under this section may, if the court so directs, and subject to general rules, be held before any judge of county courts, or before any officer of the Supreme Court, being an official referee, master, registrar in bankruptcy, or chief clerk, or before any district registrar of the High Court named for the purpose by the Lord Chancellor, or in the case of companies being wound up by a Palatine court, before a registrar of that court, and the powers of the court under sub-sections six, seven, and eight of this section may (except as to costs) be exercised by the person before whom the examination is held.

Before whom examination may be held.

Rules.—See pp. 344, 345.

9.—(1.) A committee of inspection appointed in pursuance of this Act shall consist of persons being creditors or contributories of the company or persons holding general powers of attorney from such persons in such proportions as may be agreed on by the meetings of creditors and contributories, or as, in case of difference, may be determined by the court.

Committee of inspection.

Rules.—See pp. 335, 336, 352, 353, 377–380.

Forms.—See pp. 515, 516, 563, 564.

"A Committee of Inspection."—*In re Watson* [1891], 2 Ch. 55, Chitty, J., held that, in making a supervision order, the provisions of this statute could be made use of by the Ct. for the purpose of placing restrictions on the Liq.'s powers, similar to those which the legislature has imposed upon a Liq. under a winding-up. He therefore made an order (see Form at p. 62 of Report) continuing a voluntary winding-up under supervision but subject to the control of a committee of inspection. See also *ante*, Part I., Ch. III., p. 38.

"Being Creditors."—See R. (90) 96 (n.), and compare B. A., 1890, s. 5.

"Or Contributories."—See C. A. (62), s. 74, R. (90) 83–88.

(2.) The committee of inspection shall meet at such times as they from time to time appoint, and, failing such appointment, at least once a month; and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

Meetings of committee.

(3.) The committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee are present at the meeting.

Committee may act by majority unless, &c.

SS. 9, 10.

Resignation of member.

Bankruptcy, &c., of member.

Removal of member.

(4.) Any member of the committee may resign his office by notice in writing signed by him, and delivered to the liquidator.

(5.) If a member of the committee becomes bankrupt, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee without the leave of those members of the committee who together with himself represent the creditors or contributories as the case may be, his office shall thereupon become vacant.

(6.) Any member of the committee representing creditors may be removed by an ordinary resolution at any meeting of creditors of which seven days' notice has been given, stating the object of the meeting. Any member of the committee representing contributories may be removed by an ordinary resolution at any meeting of contributories, of which seven days' notice has been given stating the object of the meeting.

Rules as to meetings.—See pp. 336-339.

Ordinary resolution.—See Rules, p. 338.

Vacancy in office.

(7.) On a vacancy occurring in the office of a member of the committee, the liquidator shall forthwith summon a meeting of creditors or of contributories, as the case may require, for the purpose of filling the vacancy, and the meeting may, by resolution, re-appoint the same or appoint another creditor or contributory to fill the vacancy.

“**Vacancy.**”—See resignation, sub-s. 4; bankruptcy, absence, &c., sub-s. 5; removal by resolution, sub-s. 6; by release, s. 22, sub-s. 4.

Continuing member may act. Where no committee, Board of Trade may act.

(8.) The continuing members of the committee, provided there be not less than two such continuing members, may act notwithstanding any vacancy in their body.

(9.) If there be no committee of inspection, any act or thing or any direction or permission by this Act authorised or required to be done or given by the committee may be done or given by the Board of Trade on the application of the liquidator.

Rules.—See pp. 377-380. As to delegation of powers of Board of Trade to official receiver, see Rule 169.

Power of Court to assess damages against delinquent

10.—(1.) Where in the course of the winding up of a company under the Companies Acts it appears that any person who has taken part in the formation or promotion of the company, or any past or present director, manager, liquidator, or other officer of the company, has misapplied or retained or become liable or accountable for any moneys

or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the court may, on the application of the official receiver, or of the liquidator of the company, or of any creditor or contributory of the company, examine into the conduct of such promoter, director, manager, liquidator, or other officer of the company, and compel him to repay any moneys or restore any property so misapplied or retained, or for which he has become liable or accountable, together with interest after such rate as the court thinks just, or to contribute such sums of money to the assets of the company by way of compensation in respect of such misapplication, retainer, misfeasance, or breach of trust as the court thinks just.

Misfeasance generally.—See *ante*, Part I., Ch. XII.

Rules.—See pp. 347, 348.

Form.—See p. 209.

Costs.—As to the costs which will be allowed on a summons hereunder when adjourned into Court, *Re Anglo-Austrian, &c., Co.* [1894], 2 Ch. 622, cited, *post*, p. 348.

If the result of examination under Act, s. 8 (3), or under C. A. (62), s. 115, makes it desirable, proceedings may be taken hereunder, and the depositions taken at the examination hereunder may be used against the persons sought to be charged, R. (92) 27, p. 346.

Section 115 of the C. A. (62) is still available where a winding-up order is made, see Part I., Ch. XI., *ante*, p. 197, and examinations thereunder are in the H. C., to take place before the Reg., R. (Ap. 92) 3 (2), p. 310.

"In the Course of the Winding up."—See sub-s. 2. If the company is not in liquidation the proceedings may be taken by action against the directors, as in *London Trust Co. v. Mackenzie*, 68 L. T. 380, in which case directors were held liable for loss occasioned by acts "ultra vires" the company.

S. 10.
—
directors,
officers,
and
promoters.

Misfeas-
ance.

What persons are within the Section.—See *ante*, Part I., Ch. XII., p. 209.

"On the application of the O. R.," &c.—In *Re Anglo-Sardinian, &c., Co.*, W. A. (94) 156, the summons was taken out in the name of the O. R. by certain persons who had given him an indemnity. Vaughan Williams, J., referring to this case, said that "the idea that such a practice should be continued was altogether wrong. The name of the Official Receiver should not be allowed to be used except in a clear case, and in doing so he ought never to act solely on an opinion of counsel obtained by the persons moving him, as it was not an independent opinion. In every case the Official Receiver need not take an opinion of counsel; he may act on his own judgment. If there was a committee of inspection, or a committee representing the creditors, and such committee was of opinion that proceedings ought to be taken, the Official Receiver might act on such opinion" (W. N. 94, p. 166).

"Compel him to pay."—An order for payment of money made by this section is to be deemed a final judgment within B. A., 1883, s. 4, subs-s. 1 (g). Companies (Winding-up) Act, 1893.

Prosecution of Directors, &c.—C. A. (62), ss. 167, 168.

(2.) The provisions of this section shall apply in the

Applica-
tion of

SS.10,11.

—
above
section.

winding up of any company under the Companies Acts whether the same is being wound up by or subject to the supervision of the court or is being wound up voluntarily, and whether the winding up commenced before or after the passing of this Act, and notwithstanding that the offence is one for which the offender may be criminally responsible.

"Voluntary Winding up."—The rules of November, 1862 (see Appendix), apply subject to certain modifications, R. (Ap. 92) 17, p 385. S. 3, as to transfer to county court, applies, and proceedings under this section can be so transferred; see (n.) to s. 3, *supra*.

Com-
panies'
liquida-
tion
account.

11.—(1.) An account, called the Companies' Liquidation Account, shall be kept by the Board of Trade with the Bank of England, and all moneys received by the Board of Trade in respect of proceedings under this Act shall be paid to that account.

Rules.—See pp. 348, 365–369.

Forms.—See pp. 515, 575, 576.

Regulations of the B. of T. See pp. 393–396.

Board of
Trade to
give
receipt.

(2.) Every liquidator of a company which is being wound up by order of the court shall, in such manner and at such times as the Board of Trade, with the concurrence of the Treasury, direct, pay the money received by him to the Companies' Liquidation Account at the Bank of England, and the Board of Trade shall furnish him with a certificate of receipt of the money so paid.

"Wound up."—Not a supervision order, cf. s. 31, sub-s. 2.

"In such manner," &c.—See Regulation of B. of T., p. 393–396.

"Pay."—He must also pay in unclaimed or undistributed assets, s. 15, sub-s. 3.

Special
bank
account.

(3.) Provided that, if the committee of inspection satisfy the Board of Trade that for the purpose of carrying on the business of the company or of obtaining advances, or for any other reason, it is for the advantage of the creditors or contributories that the liquidator should have an account with any other bank, the Board of Trade shall, on the application of the committee of inspection, authorise the liquidator to make his payments into and out of such other bank as the committee may select, and thereupon those payments shall be made in the prescribed manner.

Rules.—See p. 349.

Forms.—See p. 515, 516.

"In the prescribed manner."—See Regulation of B. of T., *post*, p. 395.

Liqui-
dator not

(4.) If any such liquidator at any time retains for more than ten days a sum exceeding fifty pounds, or such other

amount as the Board of Trade in any particular case **SS.11,12.**
 authorise him to retain, then, unless he explains the
 retention to the satisfaction of the Board of Trade, he
 shall pay interest on the amount so retained in excess at
 the rate of twenty pounds per centum per annum, and
 shall be liable to disallowance of all or such part of his
 remuneration as to the Board shall seem just, and to
 be removed from his office by the Board, and shall be
 liable to pay any expenses occasioned by reason of his
 default.

See Regulation of B. of T., *post*, p. 395.

(5.) All payments out of money standing to the credit of **Payments**
 the Board of Trade in the Companies' Liquidation Account **out.**
 shall be made by the Bank of England in the prescribed
 manner.

Rules.—See pp. 348, 349, 368, 369.

Forms.—See pp. 575, 576.

"In the prescribed manner."—See Regulation of B. of T., p. 395.

(6.) No liquidator of a company which is being wound **Payment**
 up by order of the court shall pay any sums received by **to private**
 him as liquidator into his private banking account. **account**
forbidden.

Although this rule does not apply to a winding-up under supervision
 (s. 31, sub-s. 2), no liquidator should ever pay money into his private
 account.

"Shall pay."—See Regulation of B. of T., p. 395.

12.—(1.) The liquidator of a company which is being **Powers of**
 wound up by the court may, with the sanction either of **liquida-**
 the court or of the committee of inspection, carry on the **tor, with**
 business of the company, or bring or defend any legal **sanction**
 proceeding in the name and on behalf of the company, **of com-**
 or exercise any of the powers conferred by section one **mittee or**
 hundred and fifty-nine or section one hundred and sixty **Court.**
 of the Companies Act, 1862.

Rules.—See pp. 377–380.

Forms.—See pp. 519, 520.

"Wound up."—This does not apply to supervision order, s. 31, sub-s. 2.

"May with the Sanction."—The powers in this section and sub-s. 4 re-
 quire the *sanction* "either" of the Ct. or of the C. of I. Those in sub-s. 2
 do not require such sanction. But *all* the powers referred to in the
 section require to be exercised *subject to the control* of the Ct., sub-s. 3.

"Of the C. of I."—If none, see s. 9, sub-s. 9, R. (90) 169.

"Carry on business."—See C. A. (62), s. 95, and sub-s. 2, *infra*, dis-
 pensing with *sanction*.

"C. A. (62), s. 159 or s. 160."—These sections give Liqs. power to make
 arrangements and compromises.

C. A. (62) ss. 91, 98, 99, &c.—See Acts, s. 13.

SS.12,13.

Without
sanction
of com-
mittee or
Court.

(2.) The liquidator of any such company may, without the sanction of the court or of the committee of inspection, exercise any of the other powers conferred on the liquidator by section ninety-five of the Companies Act, 1862.

"Any of the other Powers."—That is, to sell, execute deeds, prove in bankruptcy of contribs., draw bills, take out letters of administration, and do all other things necessary for winding-up, and all these *without the sanction* of the Ct., as required by C. A. (62), s. 95, but nevertheless *subject to its control*, sub-s. 3.

"Section ninety-five," &c.—This section gives the O. L. power, *with the sanction of the Court*, to do certain things.

All powers
subject to
control of
Court.

(3.) The exercise by the liquidator of the powers referred to in this section shall be subject to the control of the court, and any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of any of those powers.

"Subject to the Control."—The powers given by ss. 1 and 4 require some sanction, those by sub-s. (2) no sanction, but all the powers mentioned in the section are *subject to the control* of the Ct.

Solicitor
or agent
may be
employed
with
sanction.

(4.) The liquidator of a company which is being wound up by order of the court may, with the sanction either of the court or of the committee of inspection, employ a solicitor or other agent to take any proceedings or do any business which the liquidator is unable to take or do himself. The sanction aforesaid must be a sanction obtained before the employment, except in cases of urgency, and in such cases it must be shown that no undue delay took place in obtaining the sanction.

If no Committee, see Act, s. 9 (9); R. (90) 169.

Sanction of Court to be obtained on summons.

"Employ a Solicitor."—That is, not any solicitor whom the Liq. may choose, but such a one as the Ct. may sanction: *Re Anglo-Moravian, &c., Co.*, 24 W. R. 122.

It has been held in bankruptcy that where the official receiver is trustee without a committee of inspection, he must obtain the sanction of the Board of Trade for the employment of a solicitor: *Re Duncan* [1892], 1 Q. B. 331, 879. It has also been held in bankruptcy that the committee of inspection, or if none, the Board of Trade, in giving permission to the trustee to employ a solicitor may limit the amount of costs which may be incurred: *Re Duncan* [1892], 1 Q. B. 879.

When the amount of costs has been so limited, the taxing master cannot allow against the estate a larger sum than the amount limited: *Ib.*

Costs of.—The Liq. is not personally liable for the costs of the solicitor employed by him with such sanction: *Re Anglo-Moravian, &c., Co.*, *supra*. But the solicitor has a lien: *Capital Fire, &c., Assn.*, 24 C. D. 408.

Delega-
tion to

13. General rules may be made for requiring or enabling all or any of the powers and duties conferred and imposed

on the court by sections ninety-one, ninety-eight, ninety-nine, one hundred, one hundred and two, and one hundred and seven of the Companies Act, 1862, to be exercised or performed by the liquidator as an officer of the court, and subject to the control of the court.

Provided that the liquidator shall not, without the special leave of the court, rectify the register of members, and shall not make any call without either the special leave of the court or the sanction of the committee of inspection.

S. 91.—Confers power on the Court to call meetings, and applied *before or after the winding-up* order was made. No rule has been made conferring this general power on a liquidator (*provisional*), but he can call meetings *in the winding-up*, see R. (90) 47.

S. 98.—Settling list of contributories by Court and collection of assets. These powers are now to be exercised by the liquidator, R. (90) 83–90.

S. 99.—Representatives, contributories. The liquidator in settling the list must observe the requirements of this section, R. (90) 83.

S. 100.—*Delivery of Property.*—This power is now exercised by the liquidator, R. (90) 91.

S. 102.—*Calls.*—The power to make calls is now exercised by the liquidator, subject to restrictions, R. (90) 92.

S. 107.—Power for Court to exclude creditors not proving within stated time. This power has *not* been conferred on liquidators.

“*Rectify.*”—See C. A. (62), s. 98, and compare with R. (90) 88.

“*Call.*”—C. A. (62), ss. 95, 102, R. (90) 92; and cf. *Fowler v. Broads*, &c. (1893), 1 Ch. 724, as to calls in debenture-holders’ action, and see *ante*, Part I., Ch. IX., p. 184.

14. Where a company is being wound up voluntarily or subject to the supervision of the court, the official receiver attached to the court having jurisdiction to wind up the company may present a petition that the company be wound up by the court, and thereupon, if the court is satisfied that the voluntary winding up or winding up subject to supervision cannot be continued with due regard to the interests of the creditors or contributories, it may make an order that the company be wound up by the court.

SS. 13–15.

liquidator of certain powers of Court.

Limitation of powers.

Power for official receiver to apply for winding-up order.

15.—(1.) If the winding up of a company is not concluded within one year after its commencement, the liquidator of the company shall, at such intervals as may be prescribed, until the winding up is concluded, send to the registrar of joint stock companies a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation. Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the

Information as to pending liquidations. Statement to be sent to Registrar of J. S. Companies.

S. 15.

—

statement submitted in pursuance of this section, and to a copy thereof, or extract therefrom. But any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of court, and shall be punishable accordingly on the application of the liquidator or of the official receiver.

Rules.—See pp. 363–365.

Form.—See pp. 523–525.

“**The Liquidator**” includes O. R. when acting as Liq., R. (90) 2. But by R. (90) 168 (3), the provision of the Rules as to Liqs. and their accounts is not to apply to O. R. when he is Liq.

“**Voluntary Liquidator.**”—The B. of T. can enforce this section against voluntary liquidator, whether the winding-up is under supervision or not: *Stock and Share Auction Co.* [1894], 1 Ch. 736.

“**Prescribed.**”—Means prescribed by general rules, Act, s. 32 (1). The fee is 2s. 6d. impressed, see table of fees, p. 388. And as to copies, *ib.*

“**Any person untruthfully stating,**” &c.—Compare Act, s. 7 (6).

Default in
making
state-
ment, &c.

(2.) If a liquidator makes default in complying with the requirements of this section he shall be liable to a fine not exceeding fifty pounds for each day during which the default continues.

Comp. s. 11, sub-s. 4.

Money
unclaimed
or undis-
tributed.
Assets in
hands of
liquidator.

(3.) If it appears from any such statement or otherwise that any liquidator of a company has in his hands or under his control any money representing unclaimed or undistributed assets of the company which have remained unclaimed or undistributed for six months after the date of their receipt, the liquidator shall forthwith pay the same to the Companies' Liquidation Account at the Bank of England. Every such liquidator shall be entitled to the prescribed certificate of receipt for the money so paid, and that certificate shall be an effectual discharge to him in respect thereof.

Rules.—See pp. 365–370.

The B. of T. issued a notice under this section, dated 31 Dec. 1890, requiring Liq. to pay in moneys in their hands: *Gazette*, 2 Jan. 1891, and see Regulations B. of T., p. 394.

“**Or otherwise.**”—The B. of T. may require Liq. to answer inquiries in relation to any winding-up, and may examine him on oath, s. 25 (2); and as to auditing books, and as to vouchers and information with respect thereto, s. 20 (3).

In bankruptcy a trustee who has obtained his release is liable to account: *Re Chudley*, 14 Q. B. D. 402.

“**To Companies' Liquidation Account.**”—See s. 11; Reg. B. of T., p. 394.

“**Prescribed certificate.**”—See s. 32 (1), “Prescribed.” No form of receipt is prescribed by the rules.

Powers for

(4.) For the purpose of ascertaining and getting in any

money payable into the Bank of England in pursuance of this section, the like powers may be exercised and by the like authority as are exercisable under section one hundred and sixty-two of the Bankruptcy Act, 1883, for the purpose of ascertaining and getting in the sums, funds, and dividends referred to in that section.

S. 15.

ascertain-
ing and
getting in
money.

Rules.—See pp. 366–368.

“Section 162 of the Bankruptcy Act, 1883.”

(1.) Where the trustee, under any bankruptcy, composition or scheme pursuant to this Act, shall have under his control any unclaimed dividend which has remained unclaimed for more than six months, or where, after making a final dividend, such trustee shall have in his hands or under his control any unclaimed or undistributed moneys arising from the property of the debtor, he shall forthwith pay the same to the Bankruptcy Estates Account at the Bank of England. The Board of Trade shall furnish him with a certificate of receipt of the money so paid, which shall be an effectual discharge to him in respect thereof.

(2.) (a.) Where, after the passing of this Act, any unclaimed or undistributed funds or dividends in the hands or under the control of any trustee or other person empowered to collect, receive, or distribute any funds or dividends under any Act of Parliament mentioned in the fourth schedule, or any petition, resolution, deed, or other proceeding under or in pursuance of any such Act, have remained or remain unclaimed or undistributed for six months after the same became claimable or distributable, or in any other case for two years after the receipt thereof by such trustee or other person, it shall be the duty of such trustee or other person forthwith to pay the same to the Bankruptcy Estates Account at the Bank of England. The Board of Trade shall furnish such trustee or other person with a certificate of receipt of the money so paid, which shall be an effectual discharge to him in respect thereof.

(b.) The Board of Trade may at any time order any such trustee or other person to submit to them an account verified by affidavit of the sums received and paid by him under or in pursuance of any such petition, resolution, deed, or other proceeding as aforesaid, and may direct and enforce an audit of the account.

(c.) The Board of Trade, with the concurrence of the Treasury, may from time to time appoint a person to collect and get in all such unclaimed or undistributed funds or dividends, and for the purposes of this section any court having jurisdiction in bankruptcy shall have and at the instance of the person so appointed, or of the Board of Trade, may exercise *all the powers conferred by this Act with respect to the discovery and realisation of the property of a debtor, and the provisions of Part I. of this Act with respect thereto shall, with any necessary modifications, apply to proceedings under this section.*

(3.) The provisions of this section shall not, except as expressly declared herein, deprive any person of any larger or other right or remedy to which he may be entitled against such trustee or other person.

(4.) Any person claiming to be entitled to any moneys paid in to the Bankruptcy Estates Account pursuant to this section may apply to the Board of Trade for payment to him of the same, and the Board of Trade, if satisfied that the person claiming is entitled, shall make an order for the payment to such person of the sum due.

Any person dissatisfied with the decision of the Board of Trade in respect of his claim may appeal to the High Court.

(Compare sub-s. 5, *infra*, and see s. 11, sub-s. 5.)

SS.
15-17.

(5.) The Board of Trade may at any time after the passing of this Act open the account at the Bank of England referred to in this Act as the Bankruptcy Estates Account.

Person
claiming
money
may apply
to Board
of Trade.

(5.) Any person claiming to be entitled to any money paid into the Bank of England in pursuance of this section may apply to the Board of Trade for payment of the same, and the Board of Trade may, on a certificate by the liquidator that the person claiming is entitled, make an order for the payment to that person of the sum due. Any person dissatisfied with the decision of the Board of Trade in respect of any claim made in pursuance of this section may appeal to the High Court.

Appeal.

"For payment."—See s. 11, sub-s. 5; Reg. B. of T., p. 394.

"May Appeal."—An appeal in H. C. against decision of B. of T. is to be brought within twenty-one days of decision, R. (90) 170.

Applica-
tion of
section.

(6.) This section shall apply whether the winding-up of the company has commenced before or after the commencement of this Act.

Invest-
ment of
surplus
funds on
general
account.

16.—(1.) Whenever the cash balance standing to the credit of the Companies' Liquidation Account is in excess of the amount which in the opinion of the Board of Trade is required for the time being to answer demands in respect of companies' estates, the Board of Trade shall notify the same to the Treasury, and shall pay over the same or any part thereof, as the Treasury may require, to the Treasury, to such account as the Treasury may direct, and the Treasury may invest the said sums, or any part thereof, in Government securities, to be placed to the credit of the said account.

(2.) Whenever any part of the money so invested is, in the opinion of the Board of Trade, required to answer any demands in respect of companies' estates, the Board of Trade shall notify to the Treasury the amount so required, and the Treasury shall thereupon repay to the Board of Trade such sum as may be required to the credit of the Companies' Liquidation Account, and for that purpose may direct the sale of such part of the said securities as may be necessary.

(3.) The dividends on the investments under this section shall be paid to such account as the Treasury may direct, and regard shall be had to the amount thus derived in fixing the fees payable in respect of proceedings in the winding up of companies.

Separate
accounts

17.—(1.) An account shall be kept by the Board of Trade of the receipts and payments in the winding up of each

company, and when the cash balance standing to the credit of the account of any company is in excess of the amount which, in the opinion of the committee of inspection, is required for the time being to answer demands in respect of that company's estate, the Board of Trade shall, on the request of the committee, invest the amount not so required in Government securities, to be placed to the credit of the said account for the benefit of the said company.

Rules.—See pp. 369, 370.

Forms.—See pp. 575, 576.

As to investment, &c., of *general* cash balance of Companies' Liquidation Account, s. 16. Where balance not required of *particular* estate exceeds £2000, s. 18. Where no C. of L., s. 9, sub-s. 9.

(2.) Whenever any part of the money so invested is, in the opinion of the committee of inspection, required to answer any demands in respect of the estate of the company of the assets of which the money so invested formed part, the Board of Trade shall, on the request of the committee, raise such sum as may be required by the sale of such part of the said securities as may be necessary.

Rules.—See pp. 369, 370.

Form.—See p. 575.

(3.) The dividends on the investments made under this section shall be paid to the credit of the company of the assets of which the money so invested formed part.

18. When the balance at the credit of any company's account in the hands of the Board of Trade exceeds two thousand pounds, and the liquidator gives notice to the Board of Trade that the excess is not required for the purposes of the liquidation, then such company shall be entitled to interest upon such excess at the rate of two per centum per annum.

19. The Treasury may from time to time issue to the Board of Trade in aid of the votes of Parliament, out of the receipts arising from fees, fee stamps, and dividends on investments by the Treasury under this Act, any sums which may be necessary to meet the charges estimated by the Board of Trade in respect of salaries and expenses under this Act.

20.—(1.) Every liquidator of a company which is being wound up by order of the court shall, at such times as may be prescribed, but not less than twice in each year during his tenure of office, send to the Board of Trade, or as they direct, an account of his receipts and payments as such liquidator.

SS. 17–20.

of *particular* estates.

Request of committee to invest surplus funds.

Request of committee to raise funds by sale.

Dividends on investments.

Interests on balances above two thousand pounds.

Certain receipts and fees to be applied in aid of expenditure.

Audit by B. of T. of liquidator's accounts.

**SS. 20,
21.**

Rules.—See pp. 370–372.

Form.—See pp. 523–525.

“Liquidator.”—The provisions of the *Rules* as to accounts do not apply to O. R. when acting as Liq., R. (90) 168, 3.

“An Account.”—The forms in use may be obtained from a law stationer’s or from the B. of T., together with full directions.

Form of
account.
Verifica-
tion of.

(2.) The account shall be in a prescribed form, shall be made in duplicate, and shall be verified by a statutory declaration in the prescribed form.

“Form.”—See (n.) “An Account,” sub-s. 1, *supra*.

“Statutory Declaration.”—This means (*unless* a contrary intention appears) a declaration under Statutory Declaration Act, 1835; Interp. Act, 1889, s. 21.

Audit of
accounts.
Inspection of
liquidator’s
books.

(3.) The Board of Trade shall cause the accounts so sent to be audited, and for the purpose of the audit the liquidator shall furnish the Board with such vouchers and information as the Board may require, and the Board may at any time require the production of and inspect any books or accounts kept by the liquidator.

Rules.—See pp. 370–372.

“Vouchers and Information.”—The B. of T. may require the Liq. to answer any inquiry and may apply to Ct. to examine him on oath, s. 25, sub-s. 2. May direct local examination of books and vouchers, *ib.* sub-s. 3.

“Inspect any Books.”—As to books to be kept by Liq., see s. 21, and (n.); as to inspection by C. of L., R. (90) 144 (2); by credors. and contribs., s. 21; by B. of T. s. 25 (3).

After
audit,
copies of
account to
be filed.

(4.) When any such account has been audited, one copy thereof shall be filed and kept by the Board, and the other copy shall be filed with the court, and each copy shall be open to the inspection of any creditor, or of any person interested.

Rules.—See p. 371.

Copies to
be sent to
creditors,
&c.

(5.) The Board of Trade shall cause the account or a summary thereof when audited to be printed, and shall send a printed copy thereof by post to every creditor and contributory.

Rules.—See p. 371.

Books to
be kept by
liquidator.

21. Every liquidator of a company which is being wound up by order of the court shall keep, in manner prescribed, proper books in which he shall from time to time cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor or contributory of the company may, subject to the control of the court, personally or by his agent inspect any such books.

Rules.—See pp. 372, 373.

"May inspect."—As to inspection by B. of T., s. 20 (3). By C. of L., R. (90) 144 (2). As to local investigation of books by B. of T., s. 25 (3).

S. 22.
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22.—(1.) When the liquidator of a company which is being wound up by order of the court has realised all the property of the company, or so much thereof as can, in his opinion, be realized without needlessly protracting the liquidation, and distributed a final dividend, if any, to the creditors, and adjusted the rights of the contributories between themselves, and made a final return, if any, to the contributories, or has resigned, or has been removed from his office, the Board of Trade shall, on his application, cause a report on his accounts to be prepared, and, on his complying with all the requirements of the Board, shall take into consideration the report, and any objection which may be urged by any creditor, or contributory, or person interested against the release of the liquidator, and shall either grant or withhold the release accordingly, subject nevertheless to an appeal to the High Court.

Release
of liqui-
dators.

Appeal
against
withhold-
ing
release.

Rules.—See pp. 375, 376.

Forms.—See pp. 532-534.

"An Appeal."—See as to time and manner of Appeal, R. (90) 170.

(2.) Where the release of a liquidator is withheld the court may, on the application of any creditor, or contributory, or person interested, make such order as it thinks just, charging the liquidator with the consequences of any act or default he may have done or made contrary to his duty.

Release
withheld.

(3.) An order of the Board releasing the liquidator shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the company, or otherwise in relation to his conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

Order of
release.

Effect of.

Revoca-
tion of.

Rules.—See pp. 375, 376.

"Default."—In bankruptcy, notwithstanding the release, the Ct., where money was actually in a released trustee's hands, made him pay it over as a dividend: *Re Prager*, 3 C. D. 115. A mere default was held barred by the release: *Re Ware*, 8 C. D. 735; *Re Malden*, 55 L. T. 708.

(4.) Where the liquidator has not previously resigned or been removed, his release shall operate as a removal of him from his office.

Operates
as removal
from office
of liqui-
dator.

"From his Office."—But perhaps not from any personal liability: *Re Ware*, 8 C. D. 735.

S. 23.

Discretionary powers of liquidator and control thereof.

23.—(1.) Subject to the provisions of the Companies Acts, the liquidator of a company which is being wound up by order of the court shall, in the administration of the property of the company and in the distribution thereof amongst its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting, or by the committee of inspection, and any directions so given by the creditors or contributories at any general meeting shall in case of conflict be deemed to override any directions given by the committee of inspection.

Rules.—See pp. 377–380.

Forms.—See pp. 518–523.

“The Liquidator.”—Includes O. R. when acting as Liq., R. (90) 2.

“Wound up by Order.”—Not a supervision order, s. 31 (2).

“By Committee,” &c.—In *Re Smith*, 17 Q. B. D. 488, the trustee in bankruptcy was directed by the committee to reject a proof tendered in respect of a judgment debt. Held he had acted vexatiously and he must pay the costs of the appeal personally.

Liquidator may summon general meetings.

(2.) The liquidator may from time to time summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors or contributories, by resolution, either at the meeting appointing the liquidator or otherwise, may direct, or whenever requested in writing to do so by one-tenth in value of the creditors or contributories as the case may be.

Rules.—See pp. 336–339.

Forms.—See pp. 538–543.

“At the Meeting appointing the Liquidator.”—That is at the first meeting under s. 6.

Liquidator may apply for directions.

(3.) The liquidator may apply to the court in manner prescribed for directions in relation to any particular matter arising under the winding up.

“May apply.”—See B. A., s. 89, sub-s. 3, and *Re Mahler*, 1 Mor. 273; *Re Glanville*, 2 Mor. 71; *Ex parte Angerstein*, 9 Ch. 479.

“Prescribed.”—*I.e.* by the Rules, s. 32 (1). The application will be by summons, R. (Ap. 92) 3 (3), p. 310.

Liquidator to use his discretion.

(4.) Subject to the provisions of the Companies Acts, the liquidator shall use his own discretion in the management of the estate and its distribution among the creditors.

“Shall use his own Discretion.”—See (1), n. “Have regard to,” and s. 12, *supra*. The Ct. will not interfere with the discretion of the Liq. in realising the assets unless it is clearly exercised on a wrong principle: *Re Peters*, 47 L. T. 64.

“Distribution.”—See R. (90) 89, 90.

24. If any person is aggrieved by any act or decision of the liquidator of a company which is being wound up by order of the court, he may apply to the court, and the court may confirm, reverse, or modify the act or decision complained of, and make such order in the premises as it thinks just.

SS. 24,
25.

—
Appeal to
Court
against
liquidator.

"Any Person."—Includes any body of persons corporate or unincorporate, Interp. Act, 1889, s. 19.

"Aggrieved."—The cases in bankruptcy hereon are collected, Williams' B. P., p. 282.

"By any Act," &c.—See *Re Peters*, cited sub-s. 4, *supra*.

"Being Wound up."—Not a supervision order, s. 31 (2).

"He may apply."—The application in H. C. should be by summons, R. (Ap. 92) 3 (1) (b), (n.), *ib.* 3 (3). When not in H. C., see R. (90) 5 (f). An appeal as to a proof must be brought within twenty-one days, R. (90) 111. There does not seem to be any time fixed for an appeal as to other matters, as R. (90) 170 does not seem to apply, except perhaps when O. R. is Liq.

25.—(1.) The Board of Trade shall take cognizance of the conduct of liquidators of companies which are being wound up by order of the court, and in the event of any such liquidator not faithfully performing his duties and duly observing all the requirements imposed on him by statute, rules, or otherwise with respect to the performance of his duties, or in the event of any complaint being made to the Board by any creditor or contributory in regard thereto, the Board shall inquire into the matter, and take such action thereon as may be deemed expedient.

Control of
Board of
Trade
over liqui-
dators.

Rules.—See pp. 367-369, 380-382.

Forms.—See p. 535.

"Conduct of Liquidator."—The O. R. is an officer of the Court, cf. R. (90) 165, and also of the B. of T., which appoints him, R. (90) 162, and fixes his remuneration, Act, s. 27, sub-s. 2. When he is acting as Liq., s. 6, sub-s. 3, he is to account, not according to the rules under which Lqs. are to account, but as the B. of T. directs, R. (90) 168 (3).

(2.) The Board may at any time require any liquidator of a company which is being wound up by order of the court to answer any inquiry made by them in relation to any winding up in which the liquidator is engaged, and may, if the Board think fit, apply to the court to examine on oath the liquidator or any other person concerning the winding up.

Board of
Trade
may re-
quire
liquidator
to answer
inquiries
and
examine
him on
oath.

Rules.—See p. 382.

"Being wound up."—Not a supervision order, s. 31 (2).

"To answer any Inquiry."—See s. 15, sub-s. 3 (n.) "Or otherwise." And as to requiring vouchers and information for audit and inspecting books and accounts, s. 20 (3).

(3.) The Board may also direct a local investigation to

Board of
Trade

SS. 25, 26. be made of the books and vouchers of the liquidator of any company which is being wound up by order of the court.

"Of the Books."—See as to books, &c., s. 21. And as to audit of books and furnishing of vouchers and information, s. 20 (3).

may direct local investigation.

26.—(1.) The Lord Chancellor may, with the concurrence of the President of the Board of Trade, make general rules for carrying into effect the objects of this Act.

General rules and fees.

"General Rules" means general rules made under this Act, and includes Forms, s. 32 (1). As to the force and effect of the rules made under the similar sections of the B. A., see *Re Hann*, 18 Q. B. D. 393. Note that the proviso in the B. A., s. 127, sub-s. 4, that the general rules made thereunder are not to extend the jurisdiction of the Ct., has not been expressly adopted in this Act.

As to power of Rule Committee, see Interp. Act, 1889, s. 32 (3), and Jud. Act, 1881, s. 19. Drafts of all Rules must now be gazetted a month before coming into force (Rules Publication Act, 1893).

Rule to be laid before Parliament.

(2.) All general rules made under the foregoing provisions of this section shall be laid before Parliament within three weeks after they are made, if Parliament is then sitting, and if Parliament is not sitting, within three weeks after the beginning of the next session of Parliament, and shall be judicially noticed, and shall have effect as if enacted by this Act.

"Laid before Parliament."—Comp. Judicature Act, 1875, s. 25; and see *Powell v. Davies*, 82 L. T. J. 99.

When rules are to come into operation.

(3.) Any general rule made under this section shall not come into operation until the expiration of one month after the rule has been made and issued.

"One Month."—*I.e.* a calendar month, Interp. Act, 1889, s. 3.

"Made and Issued."—The Rules of 6 April (92) were dated 6th April, (92), and were to *come into operation* on the 6th May (92), R. (92) 37.

As to the term "issued," see *Glen v. Overseers of Fulham*, 14 Q. B. D., p. 334, where Stephen, J., says, "The *issuing* of an order means and is exactly the same as *making* an order under their seal." But see judgment of Day, J., *contra*.

Fees.

(4.) There shall be paid in respect of the proceedings under this Act such fees as the Lord Chancellor may, with the sanction of the Treasury, direct, and the Treasury may direct by whom and in what manner the same are to be collected and accounted for, and to what account they are to be paid.

See orders as to fees, 17 Dec., 1891, and 31 Aug., 1893.

The Palatine

(5.) All rules made and directions given by the Lord Chancellor under the foregoing provisions of this section

shall be adopted by the authority for the time being empowered to make rules for regulating the practice or procedure in the chancery court of the County Palatine of Lancaster, but as so adopted shall have effect with the substitution of the words "vice-chancellor" for the word "judge," and the word "registrar" for the words "chief clerk," and of the words "chambers of the registrar" for the words "chambers of the judge" and "judge's chambers," and any directions as to the remuneration to be allowed to officers of that court in respect of proceedings under this Act shall be subject to the sanction of the Chancellor of the Duchy and County Palatine of Lancaster.

Cf. R. (90) 178.

27.—(1.) The Board of Trade may, with the approval of the Treasury, appoint such additional officers as may be required by the Board for the execution of this Act, and may dismiss any person so appointed.

"Board of Trade."—See R. (90) 162 *et seq.*

(2.) The Board of Trade, with the concurrence of the Treasury, shall direct whether any and what remuneration is to be allowed to any officer of, or person attached to, the Board of Trade, performing any duties under this Act, and may vary, increase, or diminish such remuneration as they may think fit.

"Officer of or person."—See R. (90) 165.

"Remuneration."—As to remuneration of Liq., see sub-s. 3, *infra*.

"Any Duties."—*E.g.* the O. R. acting as Prov. Liq., or as O. R. and Liq. See Table B, 1, 11, p. 389.

(3.) The Lord Chancellor, with the concurrence of the Treasury, shall direct whether any and what remuneration is to be allowed to any person (other than an officer of the Board of Trade) performing any duties under this Act, and may vary, increase, or diminish such remuneration as he may think fit.

"Remuneration."—See R. (90) 154.

"Any Duties."—*E.g.* as provisional liq. or Liq., Table B, 1, 11.

28.—(1.) The Treasury shall annually cause to be prepared and laid before both Houses of Parliament an account for the year ending with the thirty-first day of March, showing the receipts and expenditure during that year in respect of proceedings under this Act, whether commenced under this or any previous Act, and the provisions of section twenty-eight of the Supreme Court of Judicature Act, 1875, shall apply to the account as if the account had been required by that section.

**SS. 26—
28.**

Court of
Lancaster.

Appoint-
ment of
Officers
by B. of T.

Remune-
ration of
officers by
B. of T.

Remune-
ration to
be directed
by Lord
Chan-
cellor.

Annual
account
by Treas-
ury of re-
ceipts and
expendi-
ture in
respect of
winding-
up pro-
ceedings.

SS. 28-
30.

"S. C. Jud. Act," 1875, s. 28.—The Treasury shall cause to be prepared annually an account for the year ending the 31st day of March, showing the receipts and expenditure during the preceding year in respect of the High Court of Justice and the Court of Appeal, and of any Court, office, or officer, the fees taken in which or by whom can be fixed in pursuance of this Act.

Such account shall be made out in such form and contain such particulars as the Treasury, with the concurrence of the Lord Chancellor, may from time to time direct.

Every officer by whom or in whose office fees are taken which can be fixed in pursuance of this Act, shall make such returns and give such information as the Treasury may from time to time require for the purpose of enabling them to make out the said account.

The said account shall be laid before both Houses of Parliament within one month after the thirty-first day of March in each year, if Parliament is then sitting, or, if not, then within one month after the next meeting of Parliament.

Audit of
accounts
of B. of T.

(2.) The accounts of the Board of Trade under this Act shall be audited in such manner as the Treasury direct, and, for the purpose of the account to be laid before Parliament, the Board of Trade shall make such returns and give such information as the Treasury direct.

Returns
by officers.

29.—(1.) The officers of the courts acting in the winding up of companies shall make to the Board of Trade such returns of the business of their respective courts and offices, at such times and in such manner and form as may be prescribed, and from such returns the Board of Trade shall cause books to be prepared which shall, under the regulations of the Board, be open for public information and searches.

As to the books to be kept, and returns made by officers of the Ct., R. (90) 150.

Annual
report of
B. of T.

(2.) The Board of Trade shall also cause a general annual report of all matters, judicial and financial, within this Act to be prepared and laid before both Houses of Parliament.

Orders
and certi-
ficates of
B. of T. to
be evi-
dence.

30.—(1.) All documents purporting to be orders or certificates made or issued by the Board of Trade and to be sealed with the seal of the Board, or to be signed by a secretary or assistant secretary of the Board, or any person authorized in that behalf by the President of the Board, shall be received in evidence and deemed to be such orders or certificates without further proof unless the contrary is shown.

Certifi-
cates
signed by
president
of B. of T.

(2.) A certificate signed by the President of the Board of Trade that any order made, certificate issued, or act done, is the order, certificate, or act of the Board of Trade, shall be conclusive evidence of the fact so certified.

31.—(1.) This Act shall not, except where it is expressed to have a more extended application, apply to any company which is being wound up in pursuance of an order made before the commencement of this Act.

**SS. 31,
32.**

Applica-
tion of
Act.

"Except where it is expressed."—See s. 10, sub-s. 2 ; s. 14 ; s. 15, sub-s. 6.

"Being wound up," &c.—See definition, sub-s. 2, *infra*.

"Commencement."—This Act "passed," *i.e.* became an Act of Parliament, on the 18th Aug., 1890. It came into *operation* 1st Jan., 1891, s. 34, see *Hall v. L. B., &c., Ry. Co.*, 17 Q. B. D. 230, and Interpretation Act, 1889, ss. 36, 37.

(2.) For the purposes of this Act a company shall not be deemed to be wound up by order of the court if the order is to continue a winding-up under the supervision of the court.

"Wound up," &c.—Nearly all the special and peculiar provisions of this Act are called into use only when "an order for winding up" has been made, see ss. 4, 6, 7, 8, 11 (2), 20, 22, &c. But ss. 3, 10, 14, and 15 apply to voluntary winding-up.

As to this sub-section, see *Stock and Share Auction Co.* [1894], 1 Ch. 736.

(3.) This Act shall not apply to any company unless the registered office of the company is situate in England or Wales.

"Any Company."—See provision for unregistered cos., s. 32, sub-s. 3.

"Registered office."—Definition of "registered office," s. 32, sub-s. 3.

"Is situate."—The order as to Fees, 25 June, 1892, provides for cases where the head office of the coy. being wound up is situate out of England. See s. 32, sub-s. 3 (n.).

32.—(1.) In this Act, unless the context otherwise requires,—

Interpre-
tation of
terms.

"The Companies Acts" mean the Companies Act, 1862, and the Acts amending the same.

"Compa-
nies Act."

See s. 35, sub-s. 2, *infra*.

"General rules" means general rules made under this Act, and includes forms.

"General
rules."

As to General Rules, see Interp. Act, 1889, ss. 14, 15, 32 (3). See also the definition of the expression "the Rules."

"Prescribed" means prescribed by general rules.

"Pre-
scribed."

"Stannaries Court" means the court of the Vice-Warden of the Stannaries.

"Stan-
naries
Court."

(2.) In Part IV. of the Companies Act, 1862, and in this Act the expression "the court," when used in relation to a company shall, unless the contrary intention appears, mean the court having jurisdiction under this Act to wind up the company.

25 & 26
Vict. c.89.
"The
Court."

SS. 32-
35.

“Regis-
tered office
of a com-
pany.”

By s. 83 of C. A. (62), any Judge may do in chambers any act which is authorized to be done by the “Court.”

(3.) For the purposes of this Act the expression “registered office of a company” shall mean the place which has been the registered office of the company for the greater part of the six months immediately preceding the presentation of the petition for winding up the company, and shall include, in the case of an unregistered company, any place which in pursuance of section one hundred and ninety-nine of the Companies Act, 1862, is to be deemed the registered office of the company for the purpose of the winding up thereof.

“Registered Office.”—The registered office must be (? or have been) in England or Wales, s. 31 (3) and (n.) “Is situate.”

“In the case of an unregistered company.”—*Re Mercantile Bank of Australia* [1892], 2 Ch. 204, the company was incorporated in 1877, in Victoria, Australia, by an Act of that colony. The *head office* was at Melbourne. In 1886 the company appointed local directors in London, and gave them power to carry on a branch of the company in London. The London office was in Lombard Street, and was the only place of business in England. The petition presented on 7th March, 1892, alleged that the London office was the “registered office” of the company within the Act, s. 31 (3). North, J., held the Act applied.

In *Re Standard, &c., Corp.*, 8 T. L. R. 455, the Company was registered only in the Isle of Man, although it had an office in London. An order to wind up had been made in the Isle of Man and Liq. appointed. A creditor presented a petition to wind up in this country. The C. A. thought under the circumstances it would be a waste of money to make an order.

“Section 199.”—See Appendix.

33. The enactments mentioned in the Second Schedule to this Act are hereby repealed, as to England and Wales, to the extent appearing in the third column of that schedule.

34. This Act shall come into operation on the first day of January one thousand eight hundred and ninety-one.

See s. 31 (1) (n.) “Commencement.”

35.—(1.) This Act may be cited as the Companies (Winding-up) Act, 1890.

(2.) This Act and the Companies Acts, 1862 to 1886, may be cited together as the Companies Acts, 1862 to 1890.

SCHEDULES.

FIRST SCHEDULE.

Meetings of Creditors and Contributories.

S. 6, sub-s. 2, p. 273, provides that the provisions of this schedule shall, *subject to such modification* as may be made therein by General Rules (see R. (90) 43-46), apply to any meeting summoned *in pursuance of that section*. See as to general meetings, R. (90) 47-52, 54-57, R. (92) 25, p. 338.

(1.) The meetings of creditors and contributories shall be held within twenty-one days after the date of the winding-up order, or within such further time as the court may approve, unless a special manager has been appointed, in which case such meetings shall be held within one month from the date of such order, or within such further time as aforesaid.

Sched. 1.
Time for meetings.

"Shall be held."—If the company is insolvent, see R. (90) 167.

"Special Manager," &c.—See Act, s. 5 (1); R. (90) 42.

(2.) The official receiver of the company shall summon the meeting by giving not less than seven days' notice of the time and place thereof in the *London Gazette* and in a local paper. Notice of such meeting shall also be sent by post to every person appearing by the company's books to be a creditor of the company and to every member of the company.

Official receiver to summon meeting.

Rules.—See pp. 335, 336.

Forms.—See pp. 538–543.

"The O. R."—Who is then Prov. Liq.: Act, s. 4, sub-ss. 1, 2.

"Not less than Seven Days."—These days will be reckoned exclusive of first day and inclusive of last day, R. S. C., O. 64, r. 12.

(3.) The official receiver shall also, as soon as practicable, send to each creditor mentioned in the company's statement of affairs, and to each person appearing from the company's books, or otherwise, to be a contributory of the company, a summary of the company's statement of affairs, including the causes of its failure, and any observations thereon which the official receiver may think fit to make; but the proceedings at any such meeting shall not be invalidated by reason of any summary or notice required by these rules not having been sent or received before the meeting.

Official receiver to send summary of statement.

"Statement of Affairs."—See s. 7.

"The Company's Books."—The O. R. as Prov. Liq. is entitled to these: *Engel v. S. M. Brewery, &c., Co.* (1892), 1 Ch. 442.

"A Contributory."—A paid-up shareholder is a contributory: *Re Anglesea, &c., Co.*, 1 Ch. 555.

"Causes of its Failure."—The Report (s. 8 (1) b) states this.

(4.) The meeting shall be held at such place as is in the opinion of the official receiver most convenient for the majority of the creditors and contributories.

Place of meeting.

Place of adjourned meeting, R. (90) 56.

(5.) The official receiver, or some person nominated by him, shall be the chairman at the meetings.

Chairman.

"Chairman."—Form No. 134. *Semble* there may be an election of a chairman, for by (21), *infra*, if no quorum is present the election of a

Sched. 1. chairman is one of the acts such a meeting may perform. As to adjournment by chairman, see (20), *infra*.

“**List of Creditors,**” &c.—As to the list of creders, or contribs, to be used at every meeting, see Form No. 129.

Right to vote.

(6.) A person shall not be entitled to vote as a creditor unless he has duly proved a debt to be due to him from the company, and the proof has been duly lodged before the time appointed for the meeting.

Rules.—See pp. 354–360.

Forms.—See pp. 543–546.

“**Person**” includes any body of persons corporate or unincorporate, *Interp. Act*, 1889, s. 19.

“**A Debt.**”—See *B. A.*, 1 Sched. (8); *ib.*, s. 37. As to debt on covenant, *Barnett v. King* [1891], 1 Ch. 4. Gambling debt, *Re Deerpurst*, 64 L. T. 273.

Unliquidated or contingent debt.

(7.) A creditor shall not vote in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained.

“**Unliquidated or contingent Debt.**”—Similar words in the Bankruptcy Act, 1869, s. 16, sub-s. 3, were construed in *Ex p. Ruffle*, 8 Ch. 1001, where Mellish, L.J., said an “unliquidated debt” includes not only all cases of damages to be ascertained by a jury, but extends to any debt where the credor. admits he cannot state the amount; a contingent debt “refers to a case where there is a doubt if there will be any debt at all.” A proof for a *specific sum*, of which details were verified by affidavit in respect of services rendered by accountants before the winding-up, is not within this clause: *Re Canadian Pacific, &c.*, 40 W. R. 40, and cf. (11), *infra*, and R. (90) 110.

And see *Re Grieves*, 13 C. D. 262; *Re Parrott*, 63 L. T. 777.

Secured creditor.

(8.) For the purpose of voting, a secured creditor shall, unless he surrenders his security, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to vote only in respect of the balance (if any) due to him, after deducting the value of his security. If he votes in respect of his whole debt he shall be deemed to have surrendered his security, unless the court on application is satisfied that the omission to value the security has arisen from inadvertence.

Form.—See p. 543.

“**And the value.**”—As to omitting to value, see *Ex p. Clarke*, 41 W. R. 116. As to correcting this, see (10), *infra*. As to valueless security, cf. *Ex p. Glynn*, 8 Mor. 213.

“**Inadvertence.**”—Credors., holders of direct security, which they believed to be collateral security, proved and voted for the full amount of their debt. They were allowed, on the ground of inadvertence, to amend their proof, and value their security, they paying costs of application and of O. R.: *Re Henry Lister* [1892], 2 Ch. 417.

See under B. A., 1 Sched. (10): *Re Dodds*, 25 Q. B. D. 529; *Re Arden*, 14 Q. B. D. 121; *Re Sadler*, 17 Q. B. D. 728; *Re Tricks*, 3 Morrell, 15; *Re Firth*, 12 C. D. 337; *Re Ker*, 13 C. D. 304; *Re Burr*, 67 L. T. 465.

Sched. 1.
—

(9.) A creditor shall not vote in respect of any debt on or secured by a current bill of exchange or promissory note held by him, unless he is willing to treat the liability to him thereon of every person who is liable thereon antecedently to the company, and against whom a receiving order in bankruptcy has not been made, as a security in his hands, and to estimate the value thereof, and for the purposes of voting, but not for the purposes of dividend, to deduct it from his proof.

Creditor
by bill or
note.

Rules.—See p. 356.

(10.) It shall be competent to the official receiver, or to the liquidator, within twenty-eight days after a proof estimating the value of a security as aforesaid had been made use of in voting at any meeting, to require the creditor to give up the security for the benefit of the creditors generally on payment of the value so estimated, with an addition thereto of twenty per centum. Provided, that where a creditor has put a value on such security, he may, at any time before he has been required to give up such security as aforesaid, correct such valuation by a new proof, and deduct such new value from his debt, but in that case such addition of twenty per centum shall not be made if the liquidator requires the security to be given up.

Security
valued
may be
bought in.

Creditor
may cor-
rect value.

(11.) The chairman of the meeting shall have power to admit or reject a proof for the purpose of voting, but his decision shall be subject to appeal to the court. If he is in doubt whether the proof of a creditor should be admitted or rejected he shall mark the proof as objected to, and shall allow the creditor to vote, subject to the vote being declared invalid in the event of the objection being sustained.

Chairman
may ad-
mit or re-
ject proof.
Appeal.

Rules.—See pp. 357–360.

Forms.—See pp. 545, 546.

“The Chairman.”—See (5), *supra*.

“For purpose of voting.”—Proof for a specific sum in respect of services rendered (see 7) may be admitted for this purpose, if verified by affidavit: *Re Canadian Pacific, &c.* (7), *supra*.

“Subject to appeal.”—See R. (90), 111, 122 (2); cf. 170, and *Re Canadian Pacific, &c., Co.*, 40 W. R. 40, *supra* (7), and *Re Henry Lister* (1892), 2 Ch. 417, *supra* (8). The O. R. is not to be liable personally for any costs in relation to an appeal as to proofs, R. (90) 121.

- Sched. 1.** (12.) A creditor or a contributory may vote either in person or by proxy.
- Proxies.** **Rules.**—See pp. 361–363.
- Form of.** (13.) Every instrument of proxy shall be in the prescribed form, and shall be issued by an official receiver, or by the liquidator of the company, and every written part thereof shall be in the handwriting of the person giving the proxy, or of any manager or clerk or other person in his regular employment, or of a commissioner to administer oaths in the Supreme Court of Judicature in England.
- Forms.**—See pp. 540, 541.
- Stamps.**—On instrument for the sole purpose of appointing proxy to vote at any *one* meeting, 1 penny, otherwise 10s., Stamp Act, 1891. If for one meeting the date must be specified. The stamp must be cancelled by the person signing the instrument of proxy. Forms of proxy sent from abroad may be stamped before execution with an English 1*d.* stamp. If stamped on arrival in England after execution the stamp will be 10s. on each.
- To be sent with notice of meeting.** (14.) General and special forms of proxy shall be sent to the creditors and contributories with the notice summoning the meeting, and neither the name nor description of the official receiver or of any other person shall be printed or inserted in the body of any instrument of proxy before it is so sent.
- To whom general proxy may be given.** (15.) A creditor or a contributory may give a general proxy to his manager or clerk, or any other person in his regular employment. In such case the instrument of proxy shall state the relation in which the person to act thereunder stands to the creditor or contributory.
- Rules.**—See pp. 361–363.
- Forms.**—See pp. 540, 541.
- To whom special proxy may be given, and for what purposes.** (16.) A creditor or a contributory may give a special proxy to any person to vote at any specified meeting, or adjournment thereof—
- (a) for or against the appointment or continuance in office of any specified person as liquidator or member of the committee of inspection, and
- As to a person voting for himself to be appointed Liq. and using special proxies, see (24), *infra*.
- (b) on all questions relating to any matter other than those above referred to and arising at any specified meeting or adjournment thereof.
- Forms.**—See p. 541.
- Must be deposited** (17.) A proxy shall not be used unless it is deposited with

the official receiver before the meeting at which it is to be used.

Sched. 1.

“**Before the Meeting.**”—Not later than 4 in the afternoon of the day before the meeting, R. (90) 123.

with O.R.
before
meeting.

(18.) Where it appears to the satisfaction of the court that any solicitation has been used by or on behalf of a liquidator in obtaining proxies or in procuring the appointment of liquidator, except by the direction of a meeting of creditors or contributories, the court shall have power, if it think fit, to order that no remuneration shall be allowed to the person by whom or on whose behalf such solicitation may have been exercised, notwithstanding any resolution of the committee of inspection or of the creditors or contributories to the contrary.

Solicita-
tion for
proxies.

(19.) A creditor or a contributory may appoint the official receiver to act in manner prescribed as his general or special proxy.

O. R. may
act as
proxy.

(20.) The chairman of the meeting may, with the consent of the meeting, adjourn the meeting from time to time and from place to place.

Adjourn-
ment of
meeting.

“**The Chairman.**”—It is the duty of the chairman to preserve order, conduct proceedings regularly, and take care that the sense of the meeting is properly ascertained with regard to any question before it; but he has no power to stop or adjourn a meeting at his own will; and if he purports to do so it is competent for the meeting to resolve to go on with the business for which it has been convened, and to appoint another chairman for that object: *National Dwellings Society v. Sykes* [1894], 3 Ch. 159.

“**May adjourn.**”—See R. (90) 56, cf. Form No. 128. A formal resolution would seem not now to be necessary, see *Re Horsley*, 6 Ch. 881.

(21.) A meeting shall not be competent to act for any purpose except the election of a chairman, the proving of debts, and the adjournment of the meeting, unless there are present or represented thereat, at least three creditors or contributories, or all the creditors or contributories, if their number does not exceed three.

Quorum.

Calculation of a quorum at creditors' meeting, R. (90) 57.

(22.) If within half an hour from the time appointed for the meeting a quorum of creditors or contributories is not present or represented, the meeting shall be adjourned to the same day in the following week at the same time and place, or to such other day as the chairman may appoint, not being less than seven or more than twenty-one days.

If no
quorum
meeting
to be ad-
journd.

(23.) The chairman of the meeting shall cause minutes of the proceedings at the meeting to be drawn up, and

Minutes
to be
drawn up.

Sched. 2.

fairly entered in a book kept for that purpose, and the minutes shall be signed by him or by the chairman of the next ensuing meeting.

“**A book.**”—*I.e.* the “Record book,” R. (90) 143.

The Ct. will not regard a resolution which is not written and signed :
Re Ratcliffe, 10 Ch. 631.

Proxies
not to vote
on certain
resolu-
tions.
Saving.

(24.) No person acting either under a general or a special proxy shall vote in favour of any resolution which would directly or indirectly place himself, his partner or employer, in a position to receive any remuneration out of the estate of the company otherwise than as a creditor rateably with the other creditors of the company: Provided that where any person holds special proxies to vote for an application to the court in favour of the appointment of himself as liquidator he may use the said proxies and vote accordingly.

“**Proxies.**”—Rules, &c., as to collected, R. (90) 123.

“**As Liquidator.**”—Cf. 16 (a), *supra*.

SECOND SCHEDULE.

(See s. 33.)

ENACTMENTS REPEALED AS TO ENGLAND AND WALES.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
25 & 26 Vict. c. 89.	The Companies Act, 1862.	Section eighty-one. In section ninety-two the words “The Court shall determine “whether any and what secu- “rity is to be given by any “official liquidator on his “appointment.” Section ninety-seven. Section one hundred and sixty-five.
30 & 31 Vict. c. 131.	The Companies Act, 1867.	Sections forty-one to forty-six.

COMPANIES (WINDING-UP) RULES (1890-1895).

Note.—As the Rules dated 30 April, 1891, and 6 April, 1892, are to be construed with and deemed to form, with the Rules of 1890, one set of Rules (see R. (Ap. 92) 37, p. 386), they have, for the sake of convenient reference, been printed together.

PRELIMINARY.

1. These Rules may be cited as “The Companies Winding-up Rules, 1890.” They shall come into operation on the first day of January one thousand eight hundred and ninety-one.

R. (90) 1.
(Ap. 92) 35
(2), 1.
“Rules.”

“Rules.”—Include Forms, s. 32 (1).

35.—(2.) [Ap. 92.] In these rules the expression “the rules” means all the rules for the time being in force in relation to winding up matters (including these rules).

“These Rules.”—*I.e.* of 6 April, 1892. See the table of them in Table of Contents. As to their commencement, short title, and citation, R. (Ap. 92) 37, p. 386.

1.—[Ap. 92.] These rules shall apply to all proceedings for or in relation to the winding up of a company where a petition to wind up the company or to continue the voluntary winding up of the company under the supervision of the Court has been presented, or where an application in the voluntary winding up of the company has for the first time been made, on or after the 1st day of January, 1891; unless the Judge before whom any such proceedings may be pending when these rules come into operation shall think it expedient to retain them.

“These Rules.”—*I.e.* Rules, 6 April, 1892, see R. (Ap. 92) 35 (2), p. 386.

“Supervision or voluntary winding up.”—See R. (Ap. 92) 17, p. 385, incorporating the General Order of November, 1862.

“Unless the Judge.”—See as to transfer, R. (Ap. 92) 14, pp. 316, 317.

R. (90) 2. **2.** In these Rules, unless the context or subject matter
(Ap. 92) 35 otherwise requires,—
(1). —

“**These Rules.**”—*I.e.* R. (90) 1; R. (Ap. 92) 35 (2), p. 386.

35.—(1.) [Ap. 92.] In the application of the Companies Winding-up Rules, 1890 and 1891, and these rules to any winding-up matter to which these rules apply :—

“**These Rules.**”—*I.e.* 6th April, 1892.

“**Winding-up matter.**”—See definition of R. 3 [Aug. 92], p. 308.

“**Acts.**” **2.—(a.)** “The Acts” means the Companies Acts, 1862 to 1890.

See s. 32 (1), s. 35 (2).

“**Com-pany.**” “The Company” means a company which is being wound up, or against which proceedings to have it wound up have been commenced.

“**Wound up.**”—*I.e.* wound up under the Act of 1890, *Re London and Suburban Bank* (1892), 1 Ch. p. 604, Act; s. 31 (2). As to “winding-up matter,” see R. [Aug. 92], p. 308, *infra*.

“**The Court.**” **2.—(a.)** “The Court” includes a Judge of the Court, and a chief clerk of the Chancery Division of the High Court, or other officer of the Court when exercising the powers of the Court pursuant to the Acts or these Rules, or the practice of the Court.

“**Court.**”—See definition of, Act, s. 32 (2); cf. also R. (90) 129 (2), and Act, s. 8, sub-s. 6 (n.).

“**Credi-tor.**” **2.—(a.)** “Creditor” includes a corporation, and a firm of creditors in partnership.

“**Gazet-ted.**” **2.—(a.)** “Gazetted” means published in the London Gazette.

R. (90) 152.

“**Judge.**” **2.—(a.)** “Judge” means in the High Court the Judge to whom the petition to wind up the company is assigned, and in any other Court the Judge thereof or officer who exercises the powers of the Judge thereof.

See Act, s. 2.

35.—(1.) [Ap. 92.] “Judge” shall in the High Court mean the Judge who for the time being exercises the jurisdiction of the High Court to wind up companies.

See Act, s. 2, and R. (Ap. 92) 17, p. 385, R. (90) 2 (a), *supra*.

“**Proceed-ings.**” **2.—(a.)** “Proceedings” means the proceedings in the winding up of a company under the Acts.

- 2.—(a.) “Official Receiver” includes any officer appointed by the Board of Trade to discharge the duties of Official Receiver under the Acts. **R. (90) 2. (Ap. 92) 35 (1).**

“O. R.”—See s. 4.

As to his powers before appointment of a Liq., see s. 4 (2), R. (90) 115, and definition of “Liquidator,” *infra*.

“Official Receiver.”

- 2.—(a.) “Registrar,” as applied to a County Court, includes, where there are joint Registrars, either of such Registrars, or a Deputy Registrar, and as applied to any Court other than the High Court, means and includes the officer of the Court whose duty it is to exercise in relation to a winding-up the functions which in the High Court are exercised by a Registrar or Chief Clerk.

“Registrar.”

“Other than H. C.”—See R. (Ap. 92) 17, p. 385, and this (n.) next rule.

- 2.—(b.) In the application of these Rules to any Court other than the High Court, the Registrar may, under the general or special directions of the Judge, hear and determine any application or matter which under the Acts and these Rules may be determined in Chambers.

“Other than H. C.”—As to Palatine Ct. of Lancaster, see Act, s. 26 (5). As to Palatine Courts and Stannaries Ct., s. 1 (1), R. (90) 178.

As to office of, R. (Ap. 92) 2, p. 309; R. (Ap. 92) 17, p. 385.

“Determined in Chambers.”—See R. (Ap. 92) 3 (3), and 4, pp. 310, 311.

35.—(1.) [Ap. 92.] “Registrar” shall in the High Court mean and include any of the Registrars in Bankruptcy of the High Court, and any person who shall be appointed to fill the office of Registrar under these Rules, and where a winding-up matter is in the District Registry of Liverpool or Manchester shall mean the District Registrar.

“Office and duties of Registrar.”—See R. (Ap. 92) 2, 4, pp. 309, 311. R. Aug. (92) 2, p. 310, R. (Ap. 92) 10, p. 313. R. (Ap. 92) 17, p. 385.

“District Registry of Liverpool,” &c.—See R. (90) 179.

35.—(1.) [Ap. 92.] Expressions relating to the Chief Clerks and Registrars of the Chancery Division of the High Court shall, except in Rule 133, be deemed to refer and be construed as referring to the Registrar. **“Chief Clerk.”**

- 2.—(a.) “Sealed” means sealed with the seal of the Court. **“Sealed.”**

- 2.—(a.) “Taxing Officer” means the officer of the Court whose duty it is to tax costs in the proceedings of the Court under its ordinary jurisdiction. **“Taxing Officer.”**

- 2.—(a.) “Liquidator” includes an Official Receiver when acting as Liquidator. **“Liquidator.”**

R. (90) 3

(1).

(Ap. 92) 36.

(Aug. 92)

3.

“Wind-
ing-up
matter.”

“Acting as Liquidator.”—He acts as Prov. Liq., Act, s. 4 (1), (2), or as O. R. and Liq., under Act, s. 6 (3).

The O. R. before appointment of Liq. is to have all the powers of a Liq. as to admission, &c., of proofs, R. (99) 115, and see R. (90) 83 (n.). He is an officer of the Ct., R. (90) 165, and of B. of T., R. (90) 165.

By R. (90) 168 (3), the provisions of these Rules (1890), as to Liq. and their accounts, shall not apply to the O. R. when he is Liq.

3.—[Aug. 92.] In the Companies Winding-up Rules, 1890 and 1892, and these Rules, the words “Winding-up matter” shall in relation to the High Court, where the winding-up of a Company is proceeding before the Judge, include any action brought by or against that Company which has been or shall be transferred to the Judge.

“Any Action transferred.”—See R. (Ap. 92) 11, pp. 316, 317.

“Winding-up.”—Act, s. 31 (2).

“Forms.”

3.—(1.) The forms in the Appendix, where applicable, and where they are not applicable forms of the like character, with such variations as circumstances may require, shall be used. Where such forms are applicable any costs occasioned by the use of any other or more prolix forms shall be borne by or disallowed to the party using the same, unless the Court shall otherwise direct.

“Appendix.”—The forms in the Appendix to the Rules are all included in the Appendix of forms to this work.

36.—[Ap. 92.] The forms in the Appendix specified in the first two columns hereunder shall be used in addition to the forms contained in the Appendix to the Companies Winding-up Rules, 1890, and in substitution for the forms contained in the said last-mentioned Appendix specified in the fourth column hereunder :

No. in Appendix.	Number for Citation.	Subject-matter.	Form in Appendix of Rules of 1890.
1	[1] . . .	General Title (High Court).	1.
2 to 6 inclusive.	[15a], [16], [16A], [17A], [19B].	Procedure on hearing of Petitions.	—
7	[33A]. . .	Part II. of Statement of Affairs . . .	Part II. of No. 33.
8	[33B]. . .	Sheet H. of Statement of Affairs . . .	Sheet H. of No. 33.
9	[33c]. . .	Sheet M. of Statement of Affairs . . .	Sheet M. of No. 33.
10	[38A]. . .	Notice to attend public Examination.	—
11	[58] . . .	Summons (General).	58.
12	[66] . . .	Proof of Debt . . .	66.

3.—(2.) Provided that the Board of Trade may from time to time alter any forms which relate to matters of an administrative and not of a judicial character, or substitute new forms in lieu thereof. Where the Board of Trade alters any form, or substitutes any new form in lieu of a form prescribed by these Rules, such altered or substituted form shall be published in the London Gazette.

R. (90)
(2), 4.
(Ap. 92) 2.
(Aug. 92)
1.

Board of
Trademay
alter ad-
ministra-
tive forms.

“The B. of T. may from time to time alter.”—Form No. 30 relating to notices in *Gazette* was altered Feb. 13, 1891, see *Gazette*, Feb. 17, 1891. Form 42 was altered Jan. 8, 1892. Form 180 of advertisement of the meeting of the committee of inspection for sanction to a proposed call, and Form 82 of affidavit verifying a liquidator's account, have also been altered. Several changes in the forms have also been necessitated by the increase in 1894 of the number of official receivers attached to the High Court.

As to B. of T. issuing administrative orders, &c., see R. (90) 175.

PROCEDURE.

In the High Court.

4. [Rule 4 of R. (90), relating to proceedings in the H. C., was annulled by R. (Ap. 92) 34, p. 385.]

Office of
Registrar
in High
Court.

2.—(1.) [Ap. 92.] All proceedings in the winding up of companies in the High Court to which these rules apply shall be from time to time attached to one or more of the Registrars, who shall, together with the necessary clerks and officers, and subject to the Acts and rules, act under the general or special directions of the Judge of the High Court.

2.—(2.) [Ap. 92.] Every other Registrar may act for and in place of such Registrar as above mentioned in all proceedings under the Acts and rules, including the holding of public examinations, and when so acting such other Registrar shall be deemed to be the Registrar for the purposes of the Acts and rules.

Other
Registrar
may act
for.

“Registrar.”—See definition, p. 307.

“Examinations.”—See R. 4 (n.) (Ap. 92), p. 311; under C. A. (62), s. 115, R. (Ap. 92) 3 (2), p. 310.

1.—[Aug. 92.] Where any action is transferred to the Judge who for the time being exercises the jurisdiction of the High Court to wind up Companies, the Registrar under the Companies Winding-up Rules may, subject to the general or special directions of the Judge, hear, determine, and deal with any application, matter or proceeding which, if the action had not been transferred, would have been determined in Chambers.

Power of
Registrar
when
action
trans-
ferred.

“Transfer.”—See pp. 314-317.

R. (Ap. 92)

3.
(Aug. 92)

2.

—
Additional
powers of
Registrar
on trans-
fer.

Matters
in High
Court to
be heard
in Court.

2.—[Aug. 92.] In every cause or matter within the jurisdiction of the Judge, whether by virtue of the Act or by transfer or otherwise, the Registrar shall, in addition to his powers and duties under the Companies Winding-up Rules, 1890 and 1892, have all the powers and duties of a Master, Registrar, Chief Clerk, or Taxing Master.

"Transfer."—See R. (Ap. 92) 14, p. 316; *ib.* 17, p. 385.

"Or otherwise."—*I.e.* by retainer, R. (Ap. 92) 1, p. 305.

3.—(1.) [Ap. 92.] The following matters and applications shall be heard before the Judge of the High Court in open Court:—

"Before the Judge."—Definition, p. 306. The following applications except (a) will be by motion, see R. (Ap. 92) 5, p. 311.

Matters not in High Court.—See R. (90) 5.

(a.) Petitions.

As to petitions, see R. (Ap. 92) 5, p. 311.

(b.) Appeals from the Board of Trade and Official Receiver to the High Court.

The annulled rule provided for appeals from B. of T.; O. R.; and *Liq.* This sub-rule only applies to appeals from the decisions of the O. R. *where acting as O. R.*, see R. (90) 170, not to appeals from his decisions when acting merely as *Liq.* In such case the appeals are to be heard in chambers: *Re Nat. Whole Meal, &c., Co.* [1892], 2 Ch. 457, R. (92) 3 (3), *infra*.

(c.) Applications by the Board of Trade under section 15 of the Companies (Winding-up) Act, 1890.

See R. (Ap. 92) 16, p. 367.

(d.) Applications for the committal of any person to prison for contempt.

See Act, s. 7, sub-ss. 5, 6; s. 15, sub-s. 1. R. S. C., O. 44.

(e.) Such matters and applications as the Judge may from time to time by any general or special orders direct to be heard before him in open Court.

Matters to
be heard
in Cham-
bers in
High
Court.

3.—(2.) [Ap. 92.] Examinations of persons summoned before the High Court under section 115 of the Companies Act, 1862, shall, unless the Judge of the High Court shall otherwise direct, be held before the Registrar in Chambers.

See Part I., Ch. XI., *ante*, p. 197.

3.—(3.) [Ap. 92.] Every other matter or application in

the High Court under the Act to which the rules apply may be heard and determined in Chambers.

R. (90) 5.
(Ap. 92),
4, 5.

"Other matter."—Examination under s. 8 may be held before Registrar, or other person mentioned in s. 8 (9), R. (92) 26, p. 344. Applications under s. 10, when in H. C. to be in Chambers, R. (90) 78, but if not in H. C. they must be in open Ct., R. (90) 5, *infra*. In the H. C., however, these applications will as a general rule be heard in Ct., and cross examination of deponents taken at the hearing. As to motions, R. (Ap. 92) 5, *infra*. As to Report of O. R., R. (90) 71.

4.—[Ap. 92.] Subject to the provisions of the Acts and rules, the Registrar may, under the general or special directions of the Judge, hear and determine any application or matter in the High Court which, under the Acts and rules, may be heard and determined in Chambers. Any matter or application in Chambers may at any time be adjourned from Chambers to be heard by the Judge of the High Court in Court, and any matter or application in Court may be adjourned to be heard and dealt with in Chambers.

Applica-
tions in
Cham-
bers.

Adjourn-
ment into
Court, &c.

5.—[Ap. 92.] Applications in Court, other than petitions, shall be made by motion, notice of which shall be served on every person against whom an order is sought not less than two clear days before the day named in the notice for hearing the motion. Applications in Chambers, other than *ex parte* applications, shall be made by summons.

Applica-
tions in
Court and
Cham-
bers.

"By Motion."—As to leaving copy notice of motion with Reg., &c., see Order (May, 1892), p. 394. Service, see R. (90) 21 (n.). Motion under s. 10, R. (90) 78, 79.

"By Summons."—See R. (Ap. 92) 9, p. 313. Form of, No. 3.

Evidence.—On all applications by summons the evidence in support must be filed, and notice of such filing must be served on the opposite party at the time of the service of the summons. The opposite party must file his evidence in answer within eight days of the service of the summons, and the said notice, and the applicant's evidence in reply, must be filed within three days from such last-mentioned time. Order, 2 June, 1892; 36 Sol. Jo. 553.

Stitching margin.—See the Notice as to stitching margins of summons, &c., for filing, p. 394.

Title.—As to, in H. C., see R. (90) 7, R. (Ap. 92) 6, p. 313. Forms, No. 3, p. 485.

In Courts other than High Court.

5. In Courts other than the High Court the following matters and applications to the Court shall be heard in open Court:—

(a.) Petitions.

(b.) Public examinations.

Matters
not in
High
Court to
be heard
in Court.

Act, s. 8, sub-s. 3; C. A. (62), ss. 115, *ib.* 117.

R. (90) 6,
7.
(Ap. 92) 6.
—

(c.) Applications under section 167 of the Companies Act, 1862.

(d.) Applications to rectify the Register.

(e.) Appeals from the Official Receiver and Board of Trade.

See R. (90) 170, and R. (Ap. 92) 3, sub-s. 1 (h) (n.), *ante*, p. 310.

(f.) Appeals from any decision or act of the Liquidator.
Act, s. 24 (n).

(g.) Applications relating to the admission or rejection of proofs.

(h.) Proceedings under section 10 of the Companies (Winding-up) Act, 1890.

Adjourn-
ment from
Cham-
bers to
Court and
vice versa.

6. Subject to the provisions of the Acts and Rules, any matter or application in a Court other than the High Court may at any time, if the Judge thinks fit, be adjourned from Chambers to Court or from Court to Chambers; and if all the contending parties require any matter or application to be adjourned from Chambers into Court it shall be so adjourned.

"Court other than," &c.—Act, s. 1, sub-s. 1, p. 263.

"Adjourned."—See R. (Ap. 92) 4, p. 311.

PROCEEDINGS.

Proceed-
ings, how
intituled.

7.—(1.) Every proceeding in Court or in Chambers under the Acts shall be dated, and shall be intituled "In the matter of the Companies Acts, 1862 to 1890," with the name of the Court in which it is taken, and of the Company to which it relates. Numbers and dates may be denoted by figures.

Title in High Court.—See R. (Ap. 92) 6, *infra*. Form [1].

"Every proceeding."—Including those in Civ. Cts., see Form [2].

"Acts 1862 to 1890."—This is the correct title, notwithstanding the passing of the Companies Act, 1893.

7.—(2.) The first proceeding in every winding-up matter shall have a distinctive number assigned to it by the proper officer, and all subsequent proceedings in the same matter shall bear the same number.

"Proper Officer."—In the H. C., the Registrar.

"Winding-up matter."—Definition of, p. 308.

Title in
High
Court.

6.—(1.) [Ap. 92.] Every proceeding in the High Court in a winding-up matter to which those rules apply shall be dated, and shall be intituled as follows:—

In the High Court of Justice.

Companies (Winding Up).

Mr. Justice

In the matter of the Companies Acts, 1862
to 1890.

R. (Ap. 92)
6-10.

with the name of the matter to which it relates. Numbers and dates may be denoted by figures.

See Form [1], p. 485. As to Title generally, R. (90) 7 (1), p. 312.

Proceeding.—As to what is a, see *Re Laxon* [1892], 3 Ch. 31.

Winding-up matter.—Definition of, p. 308.

6.—(2.) [Ap. 92.] The first proceeding in every winding-up matter shall have a distinctive number assigned to it in the office of the Registrar, and all proceedings in any matter subsequent to the first proceeding shall bear the same number as the first proceeding.

Assign-
ment of
number
by Regis-
trar.

See R. (90) 7 (2), p. 312.

7.—[Ap. 92.] All proceedings to which these rules apply shall be written or printed, or partly written or partly printed, on paper of the size of 13 inches in length and 8 inches in breadth, or thereabouts; but no objection shall be allowed to any proof, affidavit, or proxy on account only of its being written or printed on paper of other size.

Written
or printed
proceed-
ing.

Stitching margin.—As to the margin of documents which are to be filed, see the Notice, p. 394.

8.—[Ap. 92.] All orders, summonses, petitions, warrants, process of any kind (including notices when issued by the Court), and office copies in any winding-up matter to which these rules apply shall be sealed.

Process to
be sealed.

“Sealed.”—See definition, p. 307.

9.—[Ap. 92.] Every summons in a winding-up matter in the High Court to which these rules apply shall be prepared by the applicant or his solicitor, and issued from the office of the Registrar. A summons, when sealed, shall be deemed to be issued. The person obtaining the summons shall leave in the Registrar's office a duplicate which shall be stamped with the prescribed stamp and filed.

Sum-
monses.

General Form.—See p. 493.

10.—[Ap. 92.] Every order, whether made in Court or in Chambers, in a winding-up matter in the High Court

Orders.

R. (90) 8.
(Ap. 92),
12, 13.

to which these rules apply, shall be drawn up by the Registrar, unless in any proceeding or classes of proceedings the Judge of the High Court or Registrar who makes the order shall direct that no order need be drawn up. Where a direction is given that no order need be drawn up the note or memorandum of the order, signed or initialled by the Judge of the High Court or the Registrar making the order, shall be sufficient evidence of the order having been made.

"Every order."—See R. (Ap. 92) 17, p. 385. Winding-up order, R. (Ap. 92) 23, p. 334. Documents to be left with Reg., R. (Ap. 92) 23, p. 334. As to giving notice of to O. R., see R. (Ap. 92) 22, p. 334. Forms, 496-498. As to filing, R. (Ap. 92) 11, p. 373. As to fees, p. 388.

Office
copies.

12.—[Ap. 92.] All office copies of petitions, affidavits, depositions, papers, and writings, or any parts thereof, required by any liquidator, contributory, creditor, officer of a company, or other person entitled thereto, shall be provided by the Registrar, and shall, except as to figures, be fairly written out at length, and be sealed and delivered out without any unnecessary delay and in the order in which they shall have been bespoken.

As to fee for, p. 388.

Warrants
of arrest.

13.—[Ap. 92.] A warrant of arrest issued by the High Court under Rule 76 of the Companies Winding-up Rules, 1890, shall be issued in the Central Office of the Supreme Court, pursuant to an order of the Judge directing such issue.

Form.—See p. 514.

TRANSFER.

See Act, s. 3 (n.), p. 226. Notice as to Transfers, p. 393. Powers of registrar on transfer, R. (Aug. 92) 1, 2, pp. 309, 310.

Transfer
of pro-
ceedings
by Judge
of High
Court.

8. A Judge of the High Court to whom the exercise of the jurisdiction to wind up companies is assigned may at any time, for good cause shown, order the proceedings in any Court other than the High Court to be transferred to the High Court, or any proceedings in the High Court to be transferred from the High Court to any other Court. Where the transfer is to the High Court, the winding up shall be assigned to the Judge who made the order of transfer.

See the notes to s. 3.

"A Judge."—Or the L. C., s. 3 (2).

"Good Cause."—See (n.), "For good cause," r. 9.

"May Order."—Form 575.

"In any Court other than High Court."—See as to applications for transfer from Cty. Cts. the Notice as to transfers, p. 393.

"Any proceedings in the High Court."—See Act, s. 3, p. 226 (n.), and as to the limit on transfer, R. (Ap. 92) 14 (3), pp. 316, 317.

R. (90) 9-13.

9. The Judge of any Court having jurisdiction to order the winding up of a company other than the High Court or a Palatine Court may at any time, for good cause shown, order any proceedings which have been commenced or are pending in his Court to be transferred to any Court which has jurisdiction to order the winding up of a company not being the High Court or a Palatine Court.

Transfer by Judge of Court other than High Court. Form 3.

"Any Court . . . other than High Court."—Act, s. 1 (1) (n.).

"For good cause shown."—A company was formed with limited liability, and so registered. Two of the subscribers to the memorandum were infants. Questions arose whether, on account of this fact, the registration was valid or not, and whether therefore it was an unlimited and unregistered company or not. Serious and important questions of this kind are amply sufficient to justify a transfer: *Re Laxon & Co.* [1892], 3 Ch. 31. See s. 3.

"May order."—Form 575. See R. (Ap. 92) 14, pp. 316, 317.

10. Notice of an application for a transfer of proceedings shall be served on the Official Receiver before the hearing thereof.

Notice to official receiver.

Notice.—As to Notice to petitioner on application for transfer from Cty. Ct., see Notice of Transfer, p. 393, and R. (90) 14, *infra*.

"On the Official Receiver."—See *Re Jack*, 18 Q. B. D. 682.

11. When an order of transfer has been made the person on whose application the order is made shall, if the transfer is to the High Court, lodge with the chief clerk of the Judge to whom the winding-up becomes assigned, and if the transfer is to any other Court with the Registrar of that Court, a sealed copy of the order of transfer.

Transmission of order of transfer.

"Chief Clerk."—Now the Registrar in Companies (Winding-up).

12. Where the proceedings in any winding-up are transferred by any Court, the Official Receiver of the Court to which such proceedings are transferred shall become the Official Receiver in the winding-up in place of the Official Receiver of the Court from which the proceedings are transferred.

Official receiver's duties on transfer.

13. Where any proceedings are transferred from a Court to any other Court, the records of proceedings shall, if the transfer is to the High Court, be transmitted to the Chief Clerk of the Judge to whom the winding-up becomes

Transmission of records.

R. (90) 14, assigned, and if the transfer is to any other Court, to the Registrar of that Court.

(Ap. 92)
14.

Notice of
transfer
to official
receiver
and Board
of Trade.

14. As soon as the Chief Clerk of the Judge (if the transfer is to a Judge of the High Court) or the Registrar of the Court (if the transfer is to any other Court) has received the records of proceedings from the Court from which the transfer is made, he shall give notice of the transfer to the Official Receiver of the Court to which the proceedings are transferred, who shall give notice of the transfer to the Board of Trade. When a winding-up is transferred from one Court to another, it shall receive a new distinctive number.

Form.—See p. 575.

"Chief Clerk."—*I.e.* Registrar.

"Registrar."—See definition, *supra*, R. (90) 2, R. (Ap. 92) 35 (1), p. 307, *supra*, and R. (Aug. 92), p. 310.

Transfer
of juris-
diction of
County
Court and
pending
business.

15. Whenever the Lord Chancellor, by order under his hand, shall exclude any County Court from having jurisdiction under the Acts, or shall attach the district or any part of the district of a County Court to the High Court, or any other County Court, or shall detach the district or any part of the district of any County Court from the district and jurisdiction of the High Court, any winding-up business pending in the Court or district to which the order relates shall become transferred to such Court as shall be mentioned for the purpose in the order; and, thereupon, the Rules as to transfer of proceedings shall apply to the transfer of such pending proceedings in all respects as if the proceedings had been transferred by order of a Court having power to transfer proceedings.

"Shall exclude."—See Act, s. 1 (5).

Transfer
of actions
where
order to
wind up
has been
made.

14.—(1.) [Ap. 92.] Where an order has been made in the High Court for the winding up of a company on a petition presented on or after the 1st day of January, 1891, the Judge of the High Court shall have power, without further consent, to order the transfer to him of any cause or matter pending in any other Court or Division brought or continued by or against the company.

This rule is taken from R. S. C., O. 49, r. 5, printed *infra*, p. 317. Compare also R. (90) 8, 9.

"The Judge."—Or the L. C., see Act, s. 3 (2), p. 9; R. (Ap. 92) 14 (3), (*n.*).

"Power to order Transfer."—Subject, however, to power to retain. See R. (Ap. 92) 1, p. 305.

"Of any cause or matter."—See the limit, R. (Ap. 92) 14 (3), *infra*.

14.—(2.) [Ap. 92.] Where any action brought by or against a company against which a winding-up order has been made is transferred to the Judge of the High Court, the Registrar may, under the general or special directions of the Judge, hear, determine, and deal with any application, matter, or proceeding which, if the action had not been transferred, would have been determined in Chambers. R. (90) 16.
(Ap. 92)
14. —
Registrar's
duties on
Transfer.

“The Registrar.”—As to powers of registrar on transfer, see R. (Aug. 92) 1, p. 309. By R. (Aug. 92) 2, p. 310, the Reg. is to have all the powers and duties of a master, ch. clerk, or taxing master.

14.—(3.) [Ap. 92.] Provided always that nothing in this Rule or in Order XLIX., Rule 5, of the Rules of the Supreme Court, 1883, shall authorise the transfer of any action by a mortgagee or debenture-holder for the purpose of realising his security, nor the transfer of any action which is not brought to enforce payment of a debt or demand provable in the winding-up. Limit on
transfer of
action.

R. S. C., 1883, O. 49, r. 5.—This rule is as follows:—

“When an order has been made by any Judge of the Chancery Division for the winding-up of any company, or for the administration of the assets of any testator or intestate, *the Judge* in whose Court such winding-up or administration shall be pending *shall have power*, without any further consent, *to order the transfer* to such Judge of any cause or matter pending in any other Court or Division brought or continued by or against such company, or by or against the executors or administrators of the testator or intestate whose assets are being so administered, as the case may be.”

“Actions by debenture-holder.”—All such actions are now, as a rule, transferred by the L. C. (see Act, s. 3 (2), p. 266) to Vaughan-Williams, J.

Evidence in Debenture Actions.—See the notice as to filing affidavits in such actions when transferred, p. 394.

WITNESSES AND DEPOSITIONS.

16. If the Court or the officer of the Court before whom any examination is under the Acts and these Rules directed to be held shall in any case, and at any stage in the proceedings, be of opinion that it would be desirable that a person (other than the person before whom an examination is taken) should be appointed to take down the evidence of any person examined under the Acts and Rules in shorthand or otherwise, it shall be competent for the Court or officer aforesaid to make such appointment; provided that where the application is made by the Official Receiver he shall nominate a person for the purpose, and the person so nominated shall be appointed, unless the Court or officer holding the examination shall otherwise order. Every person so appointed shall be paid Shorthand
notes, &c.

- R. (90) 17.** a sum not exceeding one guinea a day, and where the Court appoints a shorthand writer a sum not exceeding eight pence per folio of ninety words for any transcript of the evidence that may be required, and such sums shall be paid by the party at whose instance the appointment was made, or out of the assets of the Company as may be directed by the Court.

Forms.—See pp. 513, 514.

"Is made by the O. R."—Where the appointment is made at instance of O. R. the cost of the notes is to be deemed an expense incurred by O. R. in getting in assets, R. (90) 31, p. 323.

A shorthand writer is invariably appointed for the public examinations under s. 8.

Commit-
tal of con-
tumacious
witness.

17.—(1.) If a person examined before a Registrar or other officer of the Court who has no power to commit for contempt of Court, refuses to answer to the satisfaction of the Registrar or officer any question which he may allow to be put, the Registrar or officer shall report such refusal to the Judge, and upon such report being made the person in default shall be in the same position and be dealt with in the same manner as if he had made default in answering before the Judge.

Form.—See p. 514.

R. S. C., O. 37, rr. 13 and 14.

"Refuses to answer."—See *Re Butterfield*, 7 Mor. 293.

"Shall report."—See next rule.

"And be dealt with."—As to the privilege of members of Parliament against order of committal for refusing to answer under B. A. 83, s. 27, see *Ex p. Lindsay* (1892), 1 Q. B. 327, R. (90) 178.

Report of
registrar.

17.—(2.) The report shall be in writing, but without affidavit, and shall set forth the question put, and the answer (if any) given by the person examined.

Form.—See p. 514.

Registrar
to name
time and
place.

Where
default
will be
reported.

17.—(3.) The Registrar or officer shall, before the conclusion of the examination at which the default in answering is made, name the time when and the place where the default will be reported to the Judge; and upon receiving the report the Judge may take such action thereon as he shall think fit. If the Judge is sitting at the time when the default in answering is made, such default may be reported immediately.

Form.—See p. 514.

[Rule (27), Ap. 1892, which refers to depositions taken at public examinations, is printed *infra*, p. 346.]

SITTINGS OF COURTS.

R. (90) 18-21.

18. Subject to the orders of the Lord Chancellor, the place of sitting of each County Court having jurisdiction under the Acts shall, for the purpose of such jurisdiction, be the town in which the Court holds its sittings for the general business of the Court, under the provisions of the County Courts Act, 1888.

Place of sitting of County Courts.

“County Court.”—See Cty. Ct. Act, 1888, districts s. 4, sittings s. 10.

19. Subject to the provisions of the Acts, the times of the sitting of each Court other than the High Court in matters of the winding up of companies shall be those appointed for the transaction of the general business of the Court, unless the Judge of any such Court shall otherwise order.

Times for holding Courts other than the High Court.

SERVICE AND EXECUTION OF PROCESS.

As to service out of the jurisdiction, see R. (90) 178, p. 383. As to substituted service, R. (90) 178.

20.—(1.) It shall be the duty of the high bailiff of a County Court to serve such orders, summonses, petitions, and notices as the Court may require him to serve; to execute warrants and other process; to attend any sittings of the Court (but not sittings in Chambers); and to do and perform all such things as may be required of him by the Court.

Duties of bailiff, &c.

Fees to high bailiff, Table C, p. 390.

20.—(2.) But this rule shall not be construed to require any order, summons, petition, or notice to be served by a bailiff or officer of the Court which is not specially by the Acts or Rules required to be so served, unless the Court in any particular proceeding by order specially so directs.

Saving.

In exercising its powers under Act, s. 1, sub-s. 6, the County Court must use its own officers. A writ of *fi. fa.* to the sheriff of the county cannot be issued in the County Court: *Re Bassett's Plaster Co.* [1894], 2 Q. B. 95.

21.—(1.) All notices and other documents for the service of which no special mode is directed may be sent by prepaid post letter to the last known address of the person to be served therewith; and the notice or document shall be considered as served at the time that the same ought to be delivered in the due course of post by the post office, and notwithstanding the same may be returned by the post office.

Service.

R. (90) 22-
26.

"All Notices."—In bankruptcy the rule similar to this has been held to include notices of motion: *Ex p. Mauthner*, 3 C. D. 113.

"Documents."—Under similar words in the Public Health (London) Act, 1891, a summons has been held to be a "document:" *Reg v. Mead* [1894], 2 Q. B. 124. No special mode has been directed for a summons.

"By prepaid post letter."—By Interp. Act, 1889, s. 26, the service by post shall be deemed to be effected by *properly addressing*, prepaying, and posting a letter containing the document, and to have been effected unless contrary is proved, at the time the letter would be delivered in the ordinary course of post.

TAXATION OF COSTS.

Taxation
of costs
payable
by or to
official re-
ceiver or
liquidator
or by com-
pany.
Notice of
appoint-
ment.
Lodgment
of bill.

22. The provisions of the following Rules numbered twenty-three to thirty shall apply to the taxation and allowance of costs payable by or to the Official Receiver or Liquidator or which are to be paid out of the assets of the company.

23. Every person whose bill or charges is or are to be taxed shall in all cases give not less than four days' notice of the appointment to tax the same to the Official Receiver and to the Liquidator (if any).

24. The bill or charges, if incurred prior to the appointment of a Liquidator, shall be lodged with the Official Receiver, and if incurred after the appointment of a Liquidator, shall be lodged with the Liquidator, three clear days before the application for the appointment to tax the same is made. The Official Receiver or the Liquidator, as the case may be, shall forthwith, on receiving notice of taxation, lodge such bill or charges with the proper Taxing Officer.

"Prior to the Appointment."—Cf. Act, ss. 4 and 6.

"Taxing Officer."—See Definition, p. 307, and see now R. (Aug. 92) 310.

Copy of
bill to be
furnished.

25. Every person whose bill or charges is or are to be taxed shall, on application either of the Official Receiver or the Liquidator, furnish a copy of his bill of charges so to be taxed on payment at the rate of 4*d.* per folio, which payment shall be charged on the assets of the Company. The Official Receiver shall call the attention of the Liquidator to any items which, in his opinion, ought to be disallowed or reduced, and may attend or be represented on the taxation.

"And may attend," &c.—These words are not in the similar Bankruptcy Rule, and the official receiver in bankruptcy cannot attend: *Re Nash* [1895], 2 Q. B. 13. Clearly he can attend under this rule.

Applica-
tions for
costs.

26. Where any party to, or person affected by, any proceeding desires to make an application for an order that

he be allowed his costs, or any part of them, incident to such proceeding, and such application is not made at the time of the proceeding—

R. (90) 27-30.

See *Re Johnstone*, 32 W. R. 1001; *Re George*, 41 L. T. 739.

(1.) Such party or person shall serve notice of his intended application on the Official Receiver, and, if a Liquidator has been appointed, on the Liquidator.

Notice to be served on.

(2.) The Official Receiver and Liquidator may appear on such application and object thereto.

Appearance of O. R. and Liq.

(3.) No costs of or incident to such application shall be allowed to the applicant, unless the Court is satisfied that the application could not have been made at the time of the proceeding.

No costs of application unless, &c.

27. Upon the taxation of any bill of costs, charges, or expenses being completed, the Taxing Officer shall issue to the person presenting such bill for taxation his certificate of taxation. The bill of costs, charges, and expenses shall be filed.

Certificate of taxation.

28. Every Taxing Officer shall keep a register of all bills taxed by him in windings-up under these Rules, and shall, within fourteen days after the 31st day of October in each year, make a return to the Board of Trade of all bills taxed by him during the twelve months preceding such 31st day of October.

Register of bills taxed.

29. Before the bill or charges of any solicitor, manager, accountant, auctioneer, broker, or other person employed by an Official Receiver or Liquidator, is or are taxed, a certificate in writing, signed by the Official Receiver or Liquidator, as the case may be, shall be produced to the Taxing Officer setting forth whether any, and if so what, special terms of remuneration have been agreed to, and in the case of the bill of costs of a solicitor, a copy of the resolution or other authority sanctioning the employment.

Certificate of employment.

"O. R. or Liq."—When O. R. is also Liq., see *Ex p. Duncan* [1892], 1 Q. B. 331. As to payment, R. (Ap. 92) 28, p. 324.

30.—(1.) Where any bill of costs, charges, fees, or disbursements of any solicitor, manager, accountant, auctioneer, broker, or other person has been taxed by a Registrar of a Court other than the High Court, the Board of Trade may require the taxation to be reviewed by a Taxing Master of the Chancery Division of the High Court.

Review of taxation at instance of Board of Trade.

"Registrar other."—As to Palatine of Lancaster, see Act, s. 26 (5).

"Reviewed by a Taxing Master."—This review is in effect a re-taxation: *Ex p. Jaynes* [1892], 2 Q. B. 587.

R. (90) 30,
31.

Notice to
be given.

(2.) In any case in which the Board of Trade require such a review of taxation as is above mentioned they shall give notice to the person whose bill has been taxed, and shall apply to the Taxing Master of the Chancery Division of the High Court to appoint a time for the review of such taxation, and thereupon such Taxing Master shall appoint a time for the review of, and shall review, such taxation, and certify the result thereof. The Board of Trade shall give to the person whose bill of costs is to be reviewed notice of the time appointed for the review.

Registrar
to forward
bill.

(3.) Where any such review of taxation as is above mentioned is required to be made by a Taxing Master of the Chancery Division of the High Court, the Registrar whose taxation is to be reviewed shall forward to the said Taxing Master the bill which is required to be reviewed.

Board of
Trademay
appear.

(4.) The Board of Trade may appear upon the review of the taxation; and if, upon the review of the taxation, the bill is allowed at a lower sum than the sum allowed on the original taxation, the amount disallowed shall (if the bill has been paid) be repaid to the Official Receiver, or the Liquidator, or other person entitled thereto. The certificate of the Taxing Master shall in every case of a review by him under this Rule be a sufficient authority to entitle the person to whom the amount disallowed ought to be repaid to demand such amount from the person liable to repay the same.

Costs of
person
whose bill
is re-
viewed.

(5.) There shall be allowed to the person whose bill is reviewed such costs of and incidental to his appearance on the review as the Taxing Master of the High Court shall think proper, and such costs shall be paid to such person out of the assets of the company: Provided that the costs of the attendance of a principal shall not be allowed if in the opinion of the Taxing Master he could have been sufficiently represented by his London agent.

COSTS PAYABLE OUT OF THE ASSETS OF THE COMPANY.

C. A. (62), s. 110.

Costs pay-
able out of
the assets.

31. The assets of a company which is being wound up, remaining after payment of the fees, and actual expenses incurred in realising or getting in the assets, shall, subject to any Order of the Court, and, if the winding-up is in the Stannaries Court, subject to the provisions of the Stannaries Act, 1887, be liable to the following payments,

which shall be made in the following order of priority, R. (90) 31. namely:—

"After Payment of the Fees."—See Table of Fees, *infra*, p. 388. Where the head office is out of England, see O. 24, June, 1892, *infra*, p. 392.

"Actual expenses incurred," &c.—Before the assets are handed over by O. R. to Liq., balances due to O. R. for fees, costs, and charges must be discharged, and O. R. has a lien on the assets until payment, R. (90) 161.

"To the following Payments."—The cost of copies of bill furnished to liquidator are also to be allowed out of these assets, R. (90) 25, p. 320. Also in certain cases the costs of persons whose bills are reviewed, R. (90) 30 (5), *supra*. As to costs of calling a meeting, see R. (90) 51, p. 337.

First. The taxed costs of the petition, including the taxed costs of any person appearing on the petition whose costs are allowed by the Court:

See Orders as to fees, p. 388, and generally as to costs on winding up petition, Part I., Ch. XIV., *ante*, p. 237.

Costs ordered to be paid by the liquidator.—These are not provided for by this rule, but they come in the same place as under the old law, *i.e.* first after the costs of the petition: *London Metallurgical Co.* [1895], 1 Ch. 758; and see hereon *ante*, Part I., Ch. XIV., p. 248.

Costs of petition where debentures absorb all assets.—Debentures of a company charged all the undertaking and property of the company, including uncalled capital. The company was ordered to be wound up, and petitioner's costs directed to be paid out of the assets. An order made in the winding-up gave liberty to the official receiver and liquidator to take misfeasance proceedings under s. 10; in these proceedings sums were recovered. The liquidator also obtained payment of calls from contributories; the assets realized were insufficient to pay off the debentures in full. *Held*, that as the fund constituted by the sums recovered and the calls were included in the security of the debenture-holders, the petitioner was not entitled to have his costs paid out of the fund. *Seem*, the liquidator was entitled to deduct the costs of the misfeasance proceedings: *Brabourne v. Anglo-Austrian Printing, &c., Union* [1895], 2 Ch. 891.

Next. The remuneration of the special manager (if any):

Special Manager.—See Act, s. 5, sub-s. 3, R. (90) 42. His costs of giving security are not to be charged on assets, R. (90) 67 (5). As to costs of solicitors, *managers*, &c., see R. (Ap. 92), 28, p. 324.

Next. The costs and expenses of any person who makes, or concurs in making, the company's statement of affairs:

Persons are to be allowed costs and expenses of preparing statement of affairs out of assets, if they were sanctioned by O. R. before being incurred, Act, s. 7 (4), R. (90) 62.

Next. The taxed charges of any shorthand writer appointed to take an examination: Provided that where the shorthand writer is appointed at the instance of the Official Receiver the cost

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(Ap. 92)
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of the shorthand notes shall be deemed to be an expense incurred by the Official Receiver in getting in and realising the assets of the Company :

See as to appointment by O. R., R. (90) 16.

Next. The Liquidator's necessary disbursements, other than actual expenses of realisation heretofore provided for :

"Necessary Disbursements."—His costs of furnishing the required security are not to be charged against assets as an expense of winding-up, R. (90) 67 (5). Nor his costs of obtaining sanction of Ct. to purchase assets, &c., R. (90) 159.

Costs of gazetting appointment of Liq. may be charged by him, R. (90) 63 (5). So also the Stamp fee for Gazette on release of Liq., R. (90) 149, the cost of re-gazetting inaccurate matter, R. (90) 153, and the cost of printing and posting copies of account to B. of T., R. (90) 139 (2).

As to the costs of calling meetings, see R. (90) 51.

The costs of the O. R. relating to appeals as to proofs are not to be borne by him personally, R. (90) 121.

Next. The costs of any person properly employed by the Liquidator with the sanction of the committee of inspection :

"Person properly employed."—As to Sp. Man., s. 5, sub-s. 1 : R. (90) 42. His costs of giving security are not to be charged against assets, R. (90) 67 (5). As to costs of solicitors, managers, &c., R. (Ap. 92) 28, *supra*.

Next. The remuneration of the Liquidator :

See R. (90) 154.

Next. The actual out-of-pocket expenses necessarily incurred by the committee of inspection, subject to the approval of the Board of Trade :

As to payment for services, R. (90) 160.

Costs,
payment
of.

23.—[Ap. 92.] No payments in respect of bill or charges of solicitors, managers, accountants, auctioneers, brokers, or other persons shall be allowed out of the assets of a company, in a winding-up matter to which these Rules apply, without proof that the same have been considered and allowed by the Registrar.

As to certificate of employment before taxation, R. (90) 29.

OFFICIAL RECEIVER AS PROVISIONAL LIQUIDATOR.

Appoint-
ment of
provi-
sional
liquidator.

32.—(1.) After the presentation of a petition, upon the application of a creditor, or of a contributory, or of the company, and upon proof by affidavit of sufficient grounds

for the appointment of the Official Receiver as Provisional Liquidator, the Court may, if it thinks fit, and upon such terms as may be just, make such appointment. R. (90) 33.

Act.—See s. 4, sub-s. 5, *ante*, p. 269.

As to Fees, Table B, p. 389, *infra*.

"On the Application."—Perhaps having regard to R. (Ap. 92) 3 (3), p. 310, it may, subject to R. (Ap. 92) 4, p. 311, be by summons before the Reg.; cf. R. S. C., 1883, O. 55, r. 15, which requires such applications to be brought before Judge in chambers.

(2.) An order appointing the Official Receiver to be Provisional Liquidator prior to the making of a winding-up order, shall bear the number of the petition in respect of which it is made, and shall state the nature and short description of the property of which the Official Receiver is ordered to take possession. Order appointing
Prov. Liq.

"Order."—The Reg. must draw it up, R. (Ap. 92) 10, p. 313. And on same day send O. R. notice of order, R. (Ap. 92) 22, p. 334. Three copies sealed must also be sent by him to O. R., R. (90) 39. The O. R. is to cause a copy to be served on chief officer of company, &c., R. (90) 40. And to send notice to local paper, and to B. of T. who shall gazette it, R. (90) 41, p. 334. Filing, R. (Ap. 92) 11, p. 373.

Form.—See p. 496.

PETITIONS.

Scale of Fees, Table A, p. 388.

33. Every petition for the winding up of any company by the Court, or subject to the supervision of the Court, shall be in the forms Nos. 12 and 13 in the Appendix, with such variations as circumstances may require. Form of
petition.

Forms.—See pp. 486-493.

What Companies may be wound up.—See *ante*, Part I., Ch. II.

When a Company can be wound up by the Court.—See *ante*, Part I., Ch. III.

Who can obtain a Winding-up Order.—See *ante*, Part I., Ch. IV.

Winding-up subject to supervision.—See *post*, Part III., Ch. II.

Petition. Title.—The title in the H. C. must be as in Form 6, p. 486. In the Cty. Ct., as given in Form 485. It must be dated, and must have a distinctive number assigned to it in Office of Reg., R. (90) 7. R. (Ap. 92) 6, p. 312. When a winding-up is transferred a new distinctive number is given, R. (90) 17. In the case of Insurance Companies the petition must also be intitled in the Life Assurance Companies Acts, 1870, 1872. So also petitions under the Joint Stock Companies Arrangement Act, 1870, must be intitled in that Act.

"With such Variations."—*Petitions with Blanks.*—In *Re Standard Contract, &c., Co.*, 8 T. L. R. 485, the petition, as presented, contained blanks as to date of incorporation, amount of capital, number of shares, &c., and the objects of the company. The information required for filling up these blanks could not be obtained from the London office of the company. Kekewich, J., dismissed the petition simply on the

- R. (90) 33.** ground that it was too sketchy (*per* Lindley, L.J.). The C. A. thought this was going too far, leave to amend should have been given, but it dismissed the appeal on other grounds.

If a resolution has been passed to wind up voluntarily the date should be stated: *Re Russell, Cordner & Co.* [1891], 3 Ch. 175.

Prayer.—The prayer in the Forms asks for winding-up order only, but it is the common practice where there is a voluntary winding-up (see C. A. (62), ss. 145, 147, 148, and (n.), *infra*, p. 328) to make a supervision order upon such a petition. *per* Kekewich, J., *Re National Whole Meal Co.* (1891), 2 Ch. 151. Where voluntary winding-up is pending, it is advisable to pray for compulsory order or *in alternative* supervision order, and to *advertise the alternative prayer*. See as to re-advertisement, *post*, p. 328.

In *Re Laxon* [1892], 3 Ch. 31, the petition prayed for a compulsory order, but as there was some doubt as to the company's proper registration, it was amended by adding a prayer that it might be wound up as an unregistered company under C. A. (62), Pt. 8.

Summary of steps to be taken by Petitioner, &c.—The petition is to be written or printed, intitled and stitched, see p. 313, and impressed with a £2 stamp, p. 388. The petition is to be presented at the office of the Reg., R. (Ap. 92) 15, p. 327, with two copies for sealing, see *ib.*, and will be answered for the next petition day, or for a certain petition day to be fixed by the solicitors. Notice of the time and place must be written on the petition and *sealed copies* thereof, *ib.* In vacation, a special day will be fixed on application to the Judge. After a petition to wind up by, or subject to the supervision of, the Ct. has been presented the petitioner must, on a day to be appointed by the Reg., not less than two days before day appointed for the hearing, attend before the Reg. and satisfy him that the petition has been duly advertised; that the prescribed affidavit verifying the statements therein and the affidavit of service (if any) have been duly filed, and that the provisions of the Rules have been duly complied with by the petitioner. If this is not done, no order for winding-up can be made, R. (Ap. 92) 18 (n.), p. 330. The petitioner must also prepare a list of persons who have given notice of their intention to appear at the hearing, and this list must be handed into Ct. prior to the hearing, R. (Ap. 92) 21, and (n.), p. 331. If no persons give notice, a statement to this effect must be handed into Ct., see p. 331.

Notice of previous Petition.—A shareholder who has notice of a previous petition being presented by a creditor, is justified in presenting a separate petition on proper independent grounds if he can prove them: *Re Doré Gallery W. N.* (91) 98, and see *Re Russell, Cordner & Co.* [1891], 3 Ch. 171 and (n) "Costs" *infra*.

As to answering petitions in Liverpool and Manchester District Registries, see R. (90) 179.

Copies.—Must be furnished to creditors, &c., if required, R. (90) 37.

Advertisement.—The petition having been answered must be advertised *seven clear days before the hearing* in certain stated papers, R. (90) 34. See the Form, No. 14, and R. (Ap. 92) 19, p. 329.

Re-advertisement.—See R. (90) 34 (n.).

Satisfying Registrar of due advertisement.—R. (Ap. 92) 18, p. 329.

Verification.—The petition must be verified by an affidavit made by the petitioner, or if a company is petitioner by a director, &c. See Form, No. 15, p. 493. It must be sworn after, and filed within four days after the petition is presented, R. (90) 36, p. 332.

Affidavits in Opposition and in Reply.—As to the time for filing these, see R. 1 [March, 93], *infra*, p. 332.

Service.—Unless presented by the company the petition must be served

at the registered office on a member, officer, &c., or if none, by being left at the office, &c., R. (90) 35, and (n.), p. 332.

The Form of Affidavit of Service (No. 16, p. 494) which requires the petition to be annexed may be used, or it may be exhibited.

Hearing.—*Adjournment* (C. A. (62), s. 86.)—An arrangement between the parties for a petition to stand over is not necessarily a sufficient ground for the Judge allowing it to do so, as the costs thereof do not necessarily fall upon the parties only: *Re Argentine Loan, &c., Co.*, 36 Sol. Jo. 541. Cogent reason must be given.

Withdrawal. Dismissal. Substitution of Petitioner.—As to the substitution of a creditor or contrib. as petitioner on the withdrawal, dismissal, or adjournment at hearing, see R. 2 [March, 93], p. 333.

Notice of opposition.—If none is received (see R. (Ap. 92) 21, p. 331. *infra*) the petition will be treated as unopposed and heard when first called. See *Re Inman*, W. N. (91) 202.

Certificate of due advertisement.—R. (Ap. 92) 18, p. 329.

Wishes of Creditors, &c.—C. A. (62) sub-s. 91, s. 149.

Fees.—Order as to fees, p. 388.

Costs.—See *ante*, Part I., Ch. XIV., p. 237. When not unreasonably presented, the petition, although dismissed, may be without costs: *Re New Oriental B. Co.*, 37 Sol. Jo. 132.

Two petitions. Priority. Costs.—The petitioner in the second petition said he did not know of the first, but the Ct. held he must be taken to have had notice on presentation. The Ct. made an order for winding-up on the first petition, gave the second petitioner his share in costs of creditors supporting the order, and the costs of his own petition up to date of presentation when he must have had notice, following *Re Building S. T.*, 41 C. D. 140; *Re Sheringham, &c., Co.*, 37 Sol. Jo. 175. And see as to costs where the second petitioner has not given notice under R. 20 [Ap. 92], p. 330 (n.).

Supervision Order. Taxation.—See Form, No. 27, p. 497.—A petitioner asked for a supervision order, a voluntary winding-up being in progress. The order was made, and without re-advertisement of the petition, but taxation of the costs of the voluntary Liq. and his solicitors was ordered, as a condition precedent to payment: *Re Civil Service Brewery Co.*, 37 Sol. Jo. 194; and see *Re Waterproof, &c., Co.*, W. N. (93) 18, *ante*, Part I., Ch. III., p. 38, and *post*, Part III., Ch. II., p. 426.

Costs of parties appearing.—Petition by credors. for supervision order. Petition assented to by company and debenture-holders. One set of costs to credors. supporting petition was allowed, following old practice, R. (90) 178. But in future costs may not be allowed unless Ct. is satisfied that the persons appearing had good reason to suppose that there would be a contest as to some matter affecting their interest: *New British Iron Co.*, 93 L. T. Jo. 202; *Re London, &c., Bank*, 93 L. T. Jo. 428.

Security for Costs.—See O. 65, r. 6; and in C. A., O. 58, r. 15. The application in H. C. is by summons: *Vale v. Oppert*, 22 W. R. 629. In Court of Appeal by motion. Cf. *Strong v. Carlyle Press*, 37 Sol. Jo. 357.

15.—[Ap. 92.] A petition to the High Court in a winding-up matter to which these rules apply shall be presented at the office of the Registrar, who shall appoint the time and place at which the petition is to be heard. Notice of the time and place appointed for hearing the petition shall be written on the petition and sealed copies thereof, and the

R. (Ap. 92) 15.

Presentation of petitions in High Court.

- R. (90) 43. Registrar may from time to time alter the time appointed and fix another time.

After presentation the petitioner is to attend before Reg., &c., see R. 18 (Ap. 92), p. 329.

"Sealed Copies."—Two copies are to be sealed.

Advertisement of
petition.

34. Every petition shall be advertised seven clear days before the hearing, as follows:—

Form.—See p. 493.

"Be Advertised."—R. (Ap. 92), 19, p. 329.

Formal Defects in Advertisements.—Formal defects are not to invalidate proceedings, R. (90) 177 (1), p. 383. The object of the rules is that the petition as advertised should be *substantially* that which is heard, see *Re National Whole Meal, &c., Co.* [1891], 2 Ch. 151.

In *Re Bull, Bevan & Co., W. N.* (91) 170, five petitions for winding up were presented, and all were in the paper for hearing on the same day, 31st October. The first petition was presented on the 18th September; the second on the 22nd September; the third on the 7th October; the fifth on the 21st October. No one appeared on the first and fourth. The second was advertised in *Gazette* of 16th October. The advertisement by error stated it had been presented on the 18th September, instead of on the 22nd, and it is also stated that the 31st October had been appointed for hearing. The Court, holding that no injustice had been caused by the error, made a supervision order on the second petition; no order on third and fifth, except that petitioner pay costs.

If the "note" required by R. 19 [Ap. 92], p. 329, does not appear in the advertisement, re-advertisement will be required: *Re Mont de Piété, &c.*, 37 Sol. Jo. 48.

Re-advertisement.—As a general rule, when the order asked for on hearing is not the order stated in the advertisement, the petition must be re-advertised. Petition for supervision order amended by praying in the alternative for compulsory order. Held fresh advertisement was necessary: *National Whole Meal Co., supra.*

In *New Oriental Bank Corp.* [1892], 3 Ch. 563, two petitions, one by the company which was in voluntary liquidation, the other by a creditor, both praying a compulsory order. At the hearing, supervision order only asked for, re-advertisement required.

In *Re Civil Service Brewery Co., W. N.* (93) 5, a supervision order was made without requiring re-advertisement, for the advertisement was in the alternative. In *Re New Morgan Gold, &c.*, 94 L. T. Jo. 607, a petition had been presented for a compulsory order and in the alternative for a winding-up order, but had been advertised as for a compulsory order only. At the hearing petitioner was willing to take supervision order. Re-advertisement was required.

Re-advertisement must be made in all the newspapers in which the original advertisements were issued, and not in the *London Gazette* only: *Dombey & Son, Ltd., W. N.* (1895), 146.

Form now generally used.—See the usual form of advertisement given p. 493.

"Seven clear days."—As to meaning of "clear" days, see R. S. C., O. 64, r. 12 (n.).

In a case before North, J., the advertisement in the *Gazette* had been published seven clear days, but that in the local paper had not. Fresh advertisements were directed, 35 Sol. Jo. 584, Par.

- (1.) In the case of a company whose registered office, or if there shall be no such office, then whose principal or last known principal place of business is or was situate within ten miles of the principal entrance of the Royal Courts of Justice, once in the *London Gazette*, and once at least in one London daily morning newspaper, or in such other newspaper as the Court directs. R. (Ap. 92)
18, 19.
- (2.) In the case of any other company, once in the *London Gazette*, and once at least in one local newspaper circulating in the district where such registered office, or principal or last known place of business, as the case may be, of such company is or was situate.

"Local paper."—In *New British Iron Co.*, 36 Sol. Jo. 610, no advertisement had been put in a local paper. The Ct., apparently having regard to R. (90) 177, p. 383, made a supervision order. As to re-advertisement, see *Dombey and Son, Ltd.*, *supra*.

The advertisement shall state the day on which the petition was presented, and the name and address of the petitioner, and of his solicitor and London agent (if any).

Form.—See Form now generally used, and (n.) p. 493.

Memorandum of Advertisements.—R. (90) 147.

Gazetting.—R. (90) 152.

19.—[Ap. 92.] Every advertisement of a petition shall contain a note at the foot thereof stating that any person who intends to appear on the hearing of the petition, either to oppose or support, must send notice of his intention to the petitioner within the time and in the manner prescribed by the next succeeding rule; and an advertisement of a petition for the winding up of a company by the Court which does not contain such a note shall be deemed irregular. Form of
advertisement
of
petition.

See RR. (Ap. 92) 20 and 21, pp. 330, 331, *infra*.

"Advertisement."—See Form, No. 14, p. 493, and R. 34 (2), *supra*.

"Shall contain a note."—See Form, No. 14, p. 493. If it does not, re-advertisement will now be ordered: *Re Mont de Piété*, 37 Sol. Jo. 48.

"Within the time," &c.—The note by mistake stated that notice must be served not later than 6 p.m. on the 13th Jan. instead of the 15th (the hearing being on the 16th). The proceedings were held not to be invalidated: *Re Broads Patent Night Light Co.*, W. N. (92) 5. See R. (90) 177.

18.—[Ap. 92.] After a petition has been presented, the petitioner shall, on a day to be appointed by the Registrar, not less than two days before the day appointed for the hearing of the petition, attend before the Registrar and Attend-
ance be-
fore hear-
ing to

R. (Ap. 92)
20.

show compliance
with rules
as to
petition.

satisfy him that the petition has been duly advertised, that the prescribed affidavit verifying the statements therein and the affidavit of service (if any) have been duly filed, and that the provisions of the rules as to petitions for winding up companies have been duly complied with by the petitioner. No order for the winding up of a company shall be made on the petition of any petitioner who has not, prior to the hearing of the petition, attended before the Registrar at the time appointed and satisfied him in manner required by this rule.

Note.—These rules (18 to 24, Part II. of Rules, Ap. 1892) embody the provisions made by the General Rules, Feb. 1890 (rules 1 to 7), which are now repealed, R. (Ap. 92) 34, p. 385.

"And satisfy him."—In *Re Kershaw, &c.*, W. N. (91) 202, North, J., refused to allow a petition to be called on unless the certificate of the Reg. was produced that petition had been properly advertised. The practice now is to place all petitions which have been presented in the paper for hearing on the day for which they have been answered.

"Duly advertised." See R. (Ap. 92) 19, *supra*.

"No order . . . shall be made."—Taken in conjunction with R. (90) 117, these words are not imperative, and so if an irregularity has happened the proceedings will not be invalidated if no injustice has been caused : *Re Lang & Co.*, 36 Sol. Jo. 271.

Notice by
persons
who in-
tend to
appear on
hearing of
petitions.

20.—[Ap. 92.] Every person who intends to appear on the hearing of a petition shall serve on, or send by post, notice in writing of his intention to the petitioner at the address stated in the advertisement of the petition. The notice shall be signed by such person, or his solicitor, and shall be served, or if sent by post shall be posted in such time as in ordinary course of post to reach the address not later than six o'clock in the afternoon of the day previous to the day appointed for the hearing of the petition. The notice may be in Form 2, with such variations as circumstances may require. A person who has failed to comply with this rule shall not, without the special leave of the Court, be allowed to appear on the hearing of the petition.

"Every Person."—Copies of petition are to be furnished to creditors and contributories, R. (90) 37.

"Who intends to appear on the hearing."—In *Re Mid Kent Fruit Co.*, 36 Sol. Jo. 389, 398, a notice was sent which stated that six persons whose names were mentioned being "the committee of creditors, appointed, &c.," intended to appear and oppose, and the notice was signed by a firm as solicitor for the above-named committee. North, J., declined to recognise the committee as appearing. See 36 Sol. Jo. 389, Par.

"Shall serve."—See form, No. 19, p. 495, and as to service, R. (90) 21. If this rule and rule 21 are complied with, and no notice of opposition is given, a winding-up petition will be treated as unopposed, and heard when first called on : *Re Inman, &c.*, W. N. (91) 202.

Compulsory Order asked for. Supervision Order taken.—A petitioner asked for a compulsory order or “that such other order may be made as may be just.” At the hearing petitioner without amending asked for a supervision order, a resolution for voluntary liquidation having been passed. Four creditors had given notice of their intention to support, but only one creditor supported a compulsory order at the hearing. If persons mean to support an application for a supervision order and not a compulsory order they *must say so in their notices*, or they will get no costs: *Re Woodrow*, W. N. (93) 38.

R. (90) 35.
(Ap. 92)
21.
—

“A Person who has failed, &c., shall not.”—After petition to wind up presented by creditor, but before advertisement, a second petition by another creditor was presented. Both came on for hearing same day. The second petitioner had not given notice hereunder. The second petitioner was held entitled to the costs of his petition up to time when he had notice of first, and to a share of the one set of costs allowed to those supporting: *Re Sheringham, &c., Co.*, W. N. (93) 5.

Evidence by persons connected with company opposing.—Persons, if connected with the company, opposing a compulsory order on a petition where desirability of investigation is alleged, should state on affidavit such matters as are within their knowledge, as to the promotion, formation, or failure of the company, as go to negative the necessity or desirability of inquiry into such matters: *Re J. H. Evans & Co.*, W. N. (1892) 126.

Evidence where debenture-holders' action pending.—The opponents to the petition should state the date of issue of the debentures, and the consideration for such debentures: *Re J. H. Evans & Co.*, *supra*.

Shareholders opposing supervision and asking for compulsory order.—They must allege and prove grounds for supposing that they will derive substantial benefit from a compulsory order: *New York Exchange*, 39 C. D. 415; *Doré Gallery Co.*, W. N. (1891) 98; *Russell, Cordner & Co.* [1891], 3 Ch. 171.

21.—[Ap. 92.] The petitioner shall prepare a list of the names and addresses of the persons who have given notice of their intention to appear on the hearing of the petition, and of their respective solicitors, which shall be in Form 4. A fair copy of the list shall, on the day appointed for hearing the petition, be handed by the petitioner into Court prior to the hearing of the petition.

List of
names and
addresses
of persons
who ap-
pear on the
petition.

Form.—See p. 495.

If no one intends to appear, a written notice to that effect should be handed to the Reg.: *Re Australasian Alkaline Co., &c.*, W. N. (91) 209; and see *Re Inman, &c.*, W. N. (91) 202, *supra*, r. 20, and *Re Lucigen, &c.*, Co., 36 Sol. Jo. 540.

“And of their respective Solicitors.”—This is not provided for by the form, but it is necessary, see Par. 37, Sol. Jo., p. 93.

Transfer.—Until this list is closed no application for transfer from Cty. Ct. to High Court will be entertained, see Notice (1), p. 393.

35. Every petition shall, unless presented by the company, be served at the registered office, if any, of the company, and if there is no registered office, then at the principal or last known principal place of business of the company, if any such place can be found, upon any

Service of
petition.

R. (90) 36. member, officer, or servant of the company there, or in
(Mh. 93) 1. case no such member, officer, or servant can be found there, then by being left at such registered office or principal place of business, or by being served on such member or members of the company as the Court may direct; and every petition for the winding up of a company, subject to the supervision of the Court, shall also be served upon the Liquidator (if any) appointed for the purpose of winding up the affairs of the company.

Forms of affidavit of service, see p. 494.

"Every Petition."—It is the sealed copy which is served.

See G. O. Nov. (62) (3), Appendix.

"Registered Office."—See Definition, Act, s. 32, sub-s. 3, and (n.), and also cf. s. 31, sub-s. 3, and (n.).

Verifica-
tion of
petition.

36. Every petition for the winding up of any company by the Court, or subject to the supervision of the Court, shall be verified by an affidavit referring thereto. Such affidavit shall be made by the petitioner, or by one of the petitioners, if more than one, or, in case the petition is presented by a company, by some director, secretary, or other principal officer thereof, and shall be sworn after and filed within four days after the petition is presented, and such affidavit shall be sufficient *prima facie* evidence of the statements in the petition.

Form.—See p. 493.

"Verified by affidavit."—As to the time for filing affidavits in opposition and in reply, see R. [Mh. 93] 1, *infra*.

"Principal officer."—The manager for the receiver in a debenture-holder's action, who was liquidator of the petitioning company, is a "principal officer." *Review Pub. Co.*, W. N. (93) 5.

"Within four days."—See R. (90) 176, as to enlarging time.

If the petition charges fraud against directors, the statutory affidavit in verification is not sufficient: *South Staffordshire Tramways*, 8 R. 288.

Time for
filing affi-
davits in
opposition.

1. (a).—[Mh. 93.] Affidavits in opposition to a petition that a company may be wound up under the order or subject to the supervision of the Court shall be filed within seven days of the date on which the affidavit verifying the petition is filed, and notice of the filing of every affidavit in opposition to such a petition shall be given to the petitioner or his solicitor.

Notice of
filing.

Time for
filing affi-
davits in
reply.

(b) [Mh. 93.] An affidavit in reply to an affidavit filed in opposition to a petition shall be filed within three days of the date on which notice of such affidavit is received by the petitioner or his solicitor.

"Evidence beyond reply."—See *Martin & Co.*, 95 L. T. Jo. 503.

2. [Mh. 93.] When a petitioner consents to withdraw his petition or to allow it to be dismissed or the hearing adjourned, the Court may, upon such terms as it may think just, substitute as petitioner any creditor or contributory who, in the opinion of the Court, would have a right to present a petition, and who is desirous of prosecuting the petition.

This rule was acted on in *Invicta Works*, W. N. (1894), p. 39, where a creditor who had not given notice of intention to appear, but who, in fact, was represented by the same solicitor as the petitioner, was substituted. A winding-up order can be made at once without any adjournment, *ib.*

R. (90) 37-40.
(Mh. 93) 2.

Withdrawal or dismissal of petition.

Substitution of petitioner.

37. Every contributory or creditor of the company shall be entitled to be furnished, by a solicitor of the petitioner, with a copy of the petition, within 24 hours after requiring the same, on paying the rate of 4*d.* per folio of 72 words for such copy.

Copy of petition to be furnished to creditor or contributory.

ORDER TO WIND UP A COMPANY.

38. An order to wind up a company shall contain at the foot thereof a notice stating that it will be the duty of the person who is at the time secretary or chief officer of the company, and of such of the persons who are liable to make out or concur in making out the company's statement of affairs as the Official Receiver may require, to attend on the Official Receiver forthwith on the service thereof at the place mentioned therein.

Form and contents.

Forms.—See pp. 496, 497.

"Order to wind up."—For the purposes of the Act a company is not to be deemed to be wound up, if the order is a supervision order, s. 31 (2).

"Shall contain a notice."—See the Form 26, p. 496.

"Who are liable."—See Act, s. 7, sub-s. 2, p.

Drawing up Order.—To be drawn up by Reg., O. (Ap. 92) 10, p. 313.

Filing.—R. (Ap. 92) 11, p. 373.

Discharge of order.—The application may be by way of appeal to C. A.: *Re Betzold*, 37 Sol. Jo. 65.

39. Three copies of every order to wind up a company, and order for the appointment of the Official Receiver as Provisional Liquidator of the company, sealed with the seal of the Court, shall forthwith be sent by post or otherwise by the Registrar to the Official Receiver.

Transmission of copy to official receiver.

"And order for the appointment of the O. R."—The form of the winding-up order, No. 26, contains this appointment.

40. The Official Receiver shall cause a copy of the order to wind up the company sealed with the seal of the Court to be served upon the secretary or other chief officer of the

Service of order.

R. (90) 41. company at the registered office of the company, or upon
(Ap. 92) such other person or persons, or in such other manner as
22-24. the Court may direct.

“**Served.**”—As to service, R. (90) 21.

Notice of
order to
Board of
Trade.

41.—(1.) When an order to wind up a company is made the Official Receiver shall forthwith give notice thereof to the Board of Trade, who shall forthwith cause such notice to be gazetted.

“**Order.**”—Or amended order, R. (90) 153.

“**The Official Receiver shall give.**”—The Reg. gives the O. R. notice of order on *same day* as it is pronounced, see R. (Ap. 92) 22, *infra*.

Notice to
local
paper.

(2.) The Official Receiver shall forthwith send notice thereof to such local paper as the Board of Trade may from time to time direct, or, in default of such direction, as he may select.

Form.—See p. 498.

Notice
that wind-
ing-up
order has
been pro-
nounced
to be given
to official
receiver.

22.—[Ap. 92.] When an order for the winding up of a company or for the appointment of the Official Receiver as provisional liquidator prior to the making of an order for the winding up of the company, has been pronounced in Court, the Registrar shall, on the same day, send to the Official Receiver a notice informing him that the order has been pronounced.

The notice may be in Forms 5 and 6 respectively, with such variations as circumstances may require.

“**Forms 5 and 6.**”—See Form, p. 499.

The Reg. draws the order, R. (Ap. 92) 10, p. 313.

The O. R. is to give notice of order forthwith to B. of T., who gazette it, R. (90) 41 (1), (2), *supra*. The O. R. is also to send notice to local paper, *ib*.

Docu-
ments for
drawing
up order
to be left
with regis-
trar.

23.—[Ap. 92.] It shall be the duty of the petitioner, and of all other persons who have appeared on the hearing of the petition, at latest on the day following the day on which an order for the winding up of a company is pronounced in Court, to leave at the Registrar's office all the documents required for the purpose of enabling the Registrar to complete the order forthwith.

“**At the Registrar's office.**”—See R. (Ap. 92) 10, p. 313.

“**All the documents.**”—The petition (stamped with a proper filing stamp), counsel's brief, affidavits used on the hearing. As to default by petitioner, before this rule, cf. *S. Mt. Brewery Co.*, W. N. (91) 51.

No ap-
point-

24.—[Ap. 92.] It shall not be necessary for the Registrar to make an appointment to settle the order, or to give

notice to any of the parties thereto, unless in any particular case the special circumstances make an appointment or notice necessary.

R. (90)
42, 43.

ments for
settling
order.

Every order is to be drawn up by Reg., R. (Ap. 92) 10, p. 313.

SPECIAL MANAGER.

42.—(1.) An application by the Official Receiver for the appointment of a special manager shall be supported by a report of the Official Receiver, which shall be placed on the file of proceedings, and in which shall be stated the amount of remuneration which, in the opinion of the Official Receiver, ought to be allowed to the special manager. No affidavit by the Official Receiver in support of such an application shall be required.

Appoint-
ment of
special
manager.

Act.—See s. 5, *ante*, p. 271.

If a Sp. Man. is appointed, the time for holding a general meeting is one month from the winding-up order, 1 Sched. (1).

As to his appointment, R. (90) 42, *supra*. He must account to O. R., R. (90) 172. He must give security, R. (90) 67.

An application to O. R., as Prov. Liq., asking him to apply for a Sp. Man., must be supported by an affidavit which can be obtained at offices. In bankruptcy the discretion of the O. R. as to appointing a Sp. Man. is absolute: *Re Whitaker*, 50 L. T. 510. The application of the O. R. for a Sp. Man. is to be supported by his report, R. (90) 42 (1), which (as also the order, *ib.* (2), *infra*) is to state the amount of remuneration: and this remuneration is payable out of the assets after cost of petition, R. (90) 31.

(3.) The remuneration of the special manager shall, unless the Judge otherwise in any special case directs, be stated in the order appointing him.

Remune-
ration of
special
manager.

This is payable out of assets after costs of petition, R. (90) 31.

(3.) A copy of the order appointing a special manager shall be transmitted to the Board of Trade by the Official Receiver.

Order ap-
pointing
special
manager
to be sent
to Board
of Trade.

All orders are drawn up by the Reg., R. (Ap. 92) 10, p. 313.

FIRST MEETINGS OF CREDITORS AND CONTRIBUTORIES.

Note.—(See 1 Sched., p. 298.) The provisions of the first schedule to the Act are, subject to modifications of General Rules, to apply to any meeting summoned in pursuance of s. 6 of the Act, Act s. 6, sub-s. 2.

43. The Official Receiver shall give to each of the directors and other officers of the company who in his opinion ought to attend the first meetings of creditors and contributories seven days' notice of the time and place

Notice of
first meet-
ing to
officers of
company.

R. (90)
44-47.
(Ap. 95) 1.

appointed for each meeting. The notice may be either delivered personally or sent by prepaid post letter, as may be convenient. It shall be the duty of every director or officer who receives notice of such meeting to attend if so required by the Official Receiver.

Act.—See s. 6, 1 Sched., p. 298.

Rules.—See p. 319, 337.

Forms.—See p. 511.

"The time."—21 days after winding-up order; if Sp. Man. appointed, one month after date of order, Sched. 1 (1). The O. R. is to fix the day, R. (90) 44, *infra*. Extension of time, R. (90) 176.

"And place."—Where in the opinion of O. R. it is most convenient, &c., 1 Sched. 4.

"And contributories."—See R. (90) 46, *infra*.

Notice of
first meet-
ing to
Board of
Trade.

44. The Official Receiver shall fix the days for the first meetings of creditors and contributories, and shall forthwith give notice thereof to the Board of Trade, who shall gazette the same.

Times for
holding
first meet-
ing.

45. [Annulled C. W. R. (1) Ap. 95], which is as follows:—
1. [Ap. 95.] [*Time for holding first meetings.*].—Rule 45 of the Companies (Winding-up) Rules, 1890 (providing that the first meetings of creditors and contributories shall not be held until the Company's Statement of Affairs has been submitted), is hereby annulled.

Time under new Rule.—The only direction as to time of meetings now is that contained in Sched. 1 to Act (1), *i.e.* within 21 days of winding-up order, or where a special manager has been appointed one month. See *ante*, p. 299.

Extension of time.—See s. (1) of Sched., p. 299. Rule 45 also provided that "if an extension of time for summoning the meetings, or either of them, is required, an application for extension of time may be made by the Official Receiver, *ex parte*, on a report without any affidavit." Although this is annulled, no doubt this will still be the practice followed where an extension is desired.

Notice to
contribu-
tories.

46. Notice of the first meeting of contributories shall be sent to every person who appears from the company's books or otherwise to be a contributory of the company.

Contributory.—Form 36. 1 Sched. (3), p. 299.

GENERAL MEETINGS OF CREDITORS AND CONTRIBUTORIES.

Meetings
for ascer-
taining
wishes of
creditors
and con-
tribu-
tories.

47. Subject to the provisions of the Companies (Winding-up) Act, 1890, and to the control of the Court, the Liquidator may from time to time, when he thinks expedient, summon, hold, and conduct meetings of the creditors or contributories for the purpose of ascertaining their wishes in all matters relating to the winding-up.

Act.—See s. 13 and notes, *ante*, p. 284, and see 23, *ante*, p. 292. As to meetings where Act of 1890 does not apply, C. A. (62), ss. 91, 149, G. O. (62) 45.

R. (90) 48-51.

"The Liq. may."—He *must* when directed to do so by resolution or demand in writing of certain proportion of creditors, &c., Act, s. 23 (2).

"Resolution of Creditors and Contributories."—See R. (92) 25, p. 338.

Forms.—See pp. 510, 538.

48. Meetings subsequent to the first meetings of creditors and contributories shall be summoned by sending notices to them. The notice to each creditor shall be sent to the address given in his proof, or if he has not proved, to the address given in the statement of affairs of the company, or to such other address as may be known to the person summoning the meeting. The notice to each contributory shall be sent to the address mentioned in the company's books as the address of such contributory, or to such other address as may be known to the person summoning the meeting.

Meetings subsequent to the first meeting.

Rules.—See pp. 319, 338.

Forms.—See pp. 538-540.

"Subsequent to First Meeting."—See as to first meeting, Act, s. 6; 1 Sched., p. 299; and R. (90) 43 to 46.

49. The notices of general meetings to be issued to creditors and contributories by the Official Receiver or Liquidator shall, where no special time is prescribed, be sent off not less than seven days before the day appointed for the meeting.

Notices of general meetings.

Default of Receipt of Notice.—See R. (90) 55, *infra*.

50. A certificate by the Official Receiver or other officer of the Court, or by the clerk of any such person, or an affidavit by the Liquidator, or his solicitor or the clerk of either of such persons, that the notice of any meeting has been duly posted, shall be sufficient evidence of such notice having been duly sent to the person to whom the same was addressed.

Proof of notice.

Forms.—See p. 539.

51. The costs of summoning a meeting of creditors at the instance of any person other than the Official Receiver or Liquidator shall be paid by the person at whose instance it is summoned, who shall before the meeting is summoned deposit with the Official Receiver or Liquidator (as the case may be) such sum as may be required by the Official Receiver or Liquidator as security for the payment of such costs. The said costs shall be repaid out of the assets of

Costs of calling meeting.

- R. (90) 52-** the company, if the creditors or contributories, as the case
55. may be, shall by resolution so direct.
(Ap. 92)
25. "Out of Assets of Company."—See R. (90) 31.

Chairman of general meetings. **52.** Where a meeting is summoned by the Official Receiver he or someone nominated by him shall be chairman of the meeting. At every other meeting of creditors and contributories (other than meetings to which the schedule of the Companies (Winding-up) Act, 1890, applies) the chairman shall be such person as the meeting by resolution shall appoint.

"Someone nominated."—Form 134, p. 542.

"Shall be Chairman."—Comp. 1 Sched. (5).

[53. This rule is annulled by R. (Ap. 92) 34, p. 385.]

Copy of
 resolution
 for chief
 clerk or
 registrar.

54. The Official Receiver, or, as the case may be, the Liquidator, shall send in the High Court to the Chief Clerk of the Judge to whom the winding up of the company is assigned, and in any other Court to the Registrar, a copy, certified by him, of every resolution of a meeting of creditors or contributories.

Chief Clerk.—*I.e.* now the Registrar.

"Every Resolution."—See next rule.

Ordinary
 resolution
 of credi-
 tors and
 contribu-
 tories.

25. [Ap. 92.]—At a meeting of creditors or contributories held in the winding up of a company under the Companies (Winding-up) Act, 1890, a resolution shall be deemed to be passed when at a meeting of creditors a majority in number and value of the creditors present, personally or by proxy, and voting on the resolution, have voted in favour of the resolution, and at a meeting of the contributories when a majority in number and value of the contributories present, personally or by proxy, and voting on the resolution, have voted in favour of the resolution, the value of the contributories being determined according to the number of votes conferred on each contributory by the regulations of the company.

"A Resolution."—The Liq. is to keep a "Record Book" in which he is to record resolutions, &c., R. (90) 143, and see 1 Sched. (23). The resolutions are not invalidated by want of notice of meeting, see next rule.

Special Resolution.—See C. A. (62), s. 51.

Where no regulations as to voting.—See C. A. s. 52.

"By Proxy."—R. (90) 123, *et seq.*, and see 1 Sched. to Act, *ante*, p. 302.

Non-re-
 ception of

55. Where a meeting of creditors or contributories is summoned by notice, the proceedings and resolutions at

the meeting shall, unless the Court otherwise orders, be valid, notwithstanding that some creditors or contributories may not have received the notice sent to them. R. (90) 56-58.

"Summoned by Notice."—See R. (90) 48, 49, *supra*, and Act, 1 a creditor. notice by Sched. (2).

56. Where a meeting of creditors is adjourned, the adjourned meeting shall be held at the same place as the original place of meeting, unless in the resolution for adjournment another place is specified, or unless the Court otherwise orders. Adjournment.

"Adjourned Meeting."—Chairman may with consent adjourn; comp. 1 Sched. (20), and see note thereunder. Cf. Form, p. 128.

57. In calculating a quorum at a creditors' meeting, those persons only who are entitled to vote shall be reckoned. Quorum.

"Quorum."—Comp. Act, 1 Sched. (21), (22), p. 303. Cf. Form, p. 40.

STATEMENT OF AFFAIRS.

58.—(1.) Every person who under section 7 of the Companies (Winding-up) Act, 1890, has been required by the Official Receiver to submit and verify a statement as to the affairs of the company, shall be furnished by the Official Receiver with forms and instructions for the preparation of the statement. The statement shall be made out in duplicate, one copy of which shall be verified by affidavit. The Official Receiver shall place upon the file of proceedings in the winding-up the verified statement of affairs. Preparation of statement of affairs.

Act.—See s. 7, *ante*, p. 273.

Forms.—See pp. 499-509.

"Every Person who," &c.—That is, one or more of the persons who are or have been, at the time of the winding-up order (cf. R. (90) 38, p. 333) or within a year before, the directors, secretary, or other chief officer of the company, or have taken a part in the promotion thereof, Act, s. 7 (2). As to their expenses, see R. (90) 62, *infra*, and (n.).

"Verify a Statement."—See Act, s. 7 (2).

(2.) The Official Receiver may from time to time hold personal interviews with such person or persons, for the purpose of investigating the Company's affairs; and it shall be the duty of every such person to attend on the Official Receiver at such time and place as the Official Receiver may appoint, and give the Official Receiver all information that he may require.

"Such persons,"—See (n.) "Every person," (1), *supra*.

R. (90) 59-63.
(Ap. 95) 2.

Extension of time for submitting statement of affairs.

Information subsequent to statement of affairs.

Default.

Expenses of statement of affairs.

59. Where any person requires any extension of time for submitting the statement of affairs, he shall apply to the Official Receiver, who may, if he thinks fit, give a written certificate extending the time, which certificate shall be filed with the proceedings in the winding-up, and shall render an application to the Court unnecessary.

"Extension of Time."—Act, s. 7 (3), R. (90) 176.

60. After the statement of affairs of a company has been submitted to the Official Receiver it shall be the duty of each person who has made it, if and when required, to attend on the Official Receiver and answer all such questions as may be put to him, and give all such further information as may be required of him by the Official Receiver in relation to the Statement of affairs.

61. Any default in complying with the requirements of section 7 of the Companies (Winding-up) Act, 1890, may be reported by the Official Receiver to the Court.

"Default."—See Act, s. 7 (5), and note thereunder.

62. A person who is required to make or concur in making any statement of affairs of a company shall before incurring any costs or expenses in and about the preparation and making of the statement apply to the Official Receiver for his sanction, and submit a statement of the estimated costs and expenses which it is intended to incur; and no person shall be allowed out of the assets of the Company any costs or expenses which have not before being incurred been sanctioned by the Official Receiver.

"A Person who is required," &c.—See (n.) "Every person," R. (90) 58, *supra*, and cf. R. (90) 38.

"Costs and Expenses."—See Act, s. 7, sub-s. 4.

"Out of Assets."—See R. (90) 31.

APPOINTMENT OF LIQUIDATOR.

Appointment of liquidator on report of meetings of creditors and contributories.

63.—(1.) As soon as possible after the first meetings of creditors and contributories have been held the Official Receiver, or the chairman of the meeting, as the case may be, shall report the result of each meeting to the Court.

Act.—See s. 6 (b), p. 273.

Form.—See p. 511.

"Shall report."—In *Re Johannisberg* [1892], 1 Ch. 583, he not only reported the result, but also expressed his *opinion*. In his *preliminary* report under s. 8 he is required to do this.

Proceedings on

63.—(2.) Annulled by R. (Ap. 95) 2, which is as follows:—

63.—(2a.) [*Meetings of creditors and contributories.*]—

Sub-section 2 of Rule 63 of the Companies Winding-up Rules, 1890, is hereby annulled, and instead thereof the following Rule, which may be cited as Rule 63 (2a), shall have effect:—

R. (90) 63.
report of
O. R.

Upon the result of the meetings of creditors and contributories being reported to the Court, the Court may, if the meeting of creditors and the meeting of contributories have each passed the same resolutions, or if the resolutions passed at the two meetings are identical in effect, upon the application of the Official Receiver, forthwith make the appointments necessary for giving effect to such resolutions. In any other case the Court shall, on the application by the Official Receiver, fix a day for considering the resolutions and determinations of the meetings, deciding differences (if any), and making such appointments and orders as shall be necessary.

63.—(3a.) [*Commencement.*].—These Rules shall come into operation on the 23rd day of April, 1895, and shall apply to every winding-up of a company under an Order of the Court made on or after the same day.

63.—(4a.) [*Citation.*].—These Rules may be cited as the Companies Winding-up Rules, 1895.

Substituted by C. W. R. (Ap. 95) to meet the decision in *Re Johannisberg*, *supra*.

“For considering resolutions.”—The O. R. will take out a summons to consider the resolutions and determinations.

63.—(3.) When a time and place have been fixed for the consideration of the determinations of the meetings such time and place shall be advertised by the Official Receiver in such manner as the Court shall direct, but so that the first or only advertisement shall be published not less than seven days before the day so fixed.

Time for
considera-
tion to be
adver-
tised.

63.—(4.) Upon the consideration of the determinations of the meetings the Court shall hear the Official Receiver and any creditor or contributory.

Who may
be heard
on con-
sideration.

63.—(5.) If a Liquidator is appointed a copy of the order appointing him shall be transmitted to the Board of Trade by the Official Receiver, and the Board of Trade shall as soon as the Liquidator has given security, cause notice of the appointment to be gazetted. The expense of gazetting notice of the appointment shall be paid by the Liquidator, but may be charged by him on the assets of the company.

Gazetting
order ap-
pointing
liquidator.

“If a Liquidator is,” &c.—Form of order, No. 26, p. 497. All orders are drawn up by Reg., R. (Ap. 92) 10, p. 313.

“Shall be transmitted.”—He must before he can act notify his appointment to Reg. of Joint Stock Companies; Act, s. 4, sub-s. 3, p. 268.

- R. (90) 64- "Security."—Act, s. 4, sub-s. 3, p. 268. R. (90) 67.
 67. "Notice . . . to be Gazetted."—Form, No. 30, p. 498. It is also
 — advertised, see next rule.
 "On the Assets of the Company."—See R. (90) 31, *supra*.

Advertise- 64. Every appointment of a Liquidator or committee
 ment of of inspection shall be advertised by the Liquidator in such
 appoint- manner as the Court directs immediately after the appoint-
 ment. ment has been made and the Liquidator has given the
 required security.

"Appointment of Liquidator."—Form, p. 497.

"Shall be Advertised."—Form, p. 499. It is also gazetted, see R. 63 (5),
supra.

"Has given . . . Security."—Rules as to security, R. (90) 67, *infra*.
 Certificate that security has been given, Form, p. 59.

Death,&c. 65. In case of the death, removal, or resignation of a
 of liqui- Liquidator another may be appointed in his place in the
 dator. same manner as directed in the case of a first appointment,
 and the Official Receiver shall on the request of not less
 than one tenth the value of the creditors or contributories
 summon meetings for the purpose of determining whether
 or not the vacancy shall be filled.

"May be appointed."—During any vacancy the O. R. is to be Liq.,
 Act, s. 4, sub-s. 4.

Style of 66. When the Official Receiver is Liquidator of a
 official Company he shall be styled "Official Receiver and
 receiver Liquidator."
 when he is

liquidator. "Is Liquidator."—In case a Liq. is not appointed by the Ct. the O. R.
 shall be Liq., Act, s. 6, sub-s. 3. If a Liq. other than O. R. is appointed
 he is styled "Liquidator," not "Official Liquidator," Act, s. 4, sub-s. 3.

SECURITY BY LIQUIDATOR OR SPECIAL MANAGER.

Standing 67. In the case of a Special Manager or a Liquidator
 security of other than the Official Receiver the following Rules as to
 Board of security shall be observed, namely :—
 Trade.

"Special Manager."—See Act, s. 5 (1), R. (90) 42. As to his account-
 ing to O. R., R. (90) 172.

"Liquidator."—The Liq. cannot act as Liq. until he has (1) notified
 his appointment to B. of T., and Reg. of J. S. Companies; (2) given
 security to satisfaction of B. of T., Act, s. 4, sub-s. 3, p. 268. As to pro-
 visional liquidators, see (n.) (3), *infra*.

An additional liquidator appointed on making a supervision order must
 give security, although the voluntary liquidator has not done so : *Hamp-*
shire Land Co. [1894], 2 Ch. 632, cited *infra*, Part III., Ch. II., p. 426.

- (1.) The security shall be given to such officers or persons **R. (90) 67,** and in such manner as the Board of Trade may from **68.** time to time direct.

"Shall . . . be given."—Form of certificate that it has been given, **To whom**
 p. 518. As to default, see R. (90) 68 (1). As to keeping up, *ib.* (2). **given.**

"Board of Trade."—As to the control of B. of T. over Liqs., Act,
 s. 25.

- (2.) It shall not be necessary that security shall be given **May be**
 in each separate winding-up; but security may be **special or**
 given either specially in a particular winding-up or **general.**
 generally to be available for any winding-up in which
 the person giving security may be appointed either as
 Liquidator or Special Manager.

- (3.) The Board of Trade shall fix the amount and nature **Board of**
 of such security, and may from time to time, as they **Trade**
 think fit, either increase or diminish the amount of **to fix**
 special or general security which any person has **amount,**
 given. **&c., and**
increase or

Provisional Liquidator.—The Board of Trade has power under this rule **diminish**
 to fix the security to be given by a provisional liquidator, whether **it.**
 appointed before or after the winding-up order: *Mercantile Bank of*
Australia [1892], 2 Ch. 204.

See also the *Washington Diamond Mining Co.*, referred to, Act, s. 4,
 sub-s. 1.

- (4.) The certificate of the Board of Trade that a Liqui- **Certificate**
 dator or Special Manager has given security to their **of Board**
 satisfaction shall be placed on the file of proceedings. **of Trade.**

"File."—See "File of Proceedings," R. (Ap. 92) 11, R. (Ap. 92) 31-
 33, p. 374.

- (5.) The cost of furnishing the required security by a **Cost of**
 Liquidator or Special Manager shall be borne by him **furnishing**
 personally, and shall not be charged against the **security,**
 assets of the Company as an expense incurred in the **how to be**
 winding-up. **borne.**

Costs payable out of Assets.—See R. (90) 31.

68.—(1.) If a Liquidator or Special Manager fails to **Failure**
 give the required security within the time stated for that **to give**
 purpose in the order appointing him or any extension **security.**
 thereof, the Official Receiver shall report such failure to
 the Court, who shall thereupon rescind the order ap-
 pointing the Liquidator or Special Manager.

(2.) If a Liquidator or Special Manager fails to keep up **Failure to**
 his security, the Official Receiver shall report such failure **keep up**
 to the Court, who may thereupon remove the Liquidator **security.**
 or Special Manager and make such order as to costs as
 the Court shall think fit.

REPORT UNDER ACT, S. 8.

R. (90) 69-
72.
(Ap. 92)
26.

Report of
official
receiver to
be filed.

69.—(1.) A report made by the Official Receiver pursuant to section 8 of the Companies (Winding-up) Act, 1890, shall state in a narrative form the facts, and matters which the Official Receiver desires to bring to the notice of the Court, and his opinion as required by section 8 of the Companies (Winding-up) Act, 1890.

"A Report . . . pursuant to S. 8."—That is, a "Preliminary Report," and a "Further Report," see Act, s. 8, sub-ss. 1, 2, 3.

See notes to the section, *supra*.

Appoint-
ment of
time for
considera-
tion of
report.

70. The Official Receiver may apply to the Court to fix a day for the consideration of the report, and on such application the Court shall appoint a day on which the report shall be considered.

Consider-
ation of
report.

71. The consideration of the report shall be before the Judge of the Court personally in Chambers, and the Official Receiver shall personally, or by counsel or solicitor, attend the consideration of the report, and give the Court any further information or explanation with reference to the matters stated in the report which the Court may require.

"The consideration."—See Act, s. 8, sub-s. 3.

"Before the Judge."—See definition "Judge," R. (90) 2. As to the examination, see R. (Ap. 92) 26, *infra*.

"Further information."—If information is required to form the basis of an order for examination under s. 8, sub-s. 3, it must be in writing: *Re Great Kruger, &c., Co.* [1892], 3 Ch. 307. See (n.) "Further Report," p. 276.

[Rule 72 of the Rules of 1890 is annulled by R. (Ap. 92) 34, p. 385, and the following R. (Ap. 92) 26, substituted.]

PUBLIC EXAMINATION.

Public
examina-
tions.

26.—[Ap. 92.] Where the Judge makes an order under Section 8 of the Companies (Winding-up) Act, 1890, directing any person or persons to attend for public examination:—

"An Order."—Act, s. 8, sub-s. 3, R. (90) 73. Form 41, p. 512.

(a.) The examination shall be held before the Judge. Provided that in the High Court the Judge may direct that the whole or any part of the examination of any such person or persons be held before the Registrar or before any of the persons mentioned in sub-section 9 of the said section.

"Sub-section 9."—See p. 279.

(b.) The Judge may, if he think fit, either in the order for examination, or by any subsequent orders, give directions as to the special matters on which any such person is to be examined. R. (90) 73 - 76.

“Order.”—Form 41, p. 512. R. (90) 73 (n.), *infra*.

(c.) Where on an examination held before the Registrar or one of the persons mentioned in sub-section 9 of the said section he is of opinion that such examination is being unduly or unnecessarily protracted, or for any other sufficient cause, he may adjourn the examination of any person or any part of the examination to be held before the Judge.

Refusal to answer.—R. (90) 17.

Default in attending.—R. (90) 76.

(d.) If the winding-up is in the Stannaries Court the examination shall be held before the Vice-Warden.

73. Upon an order directing a person to attend for public examination being made, the Official Receiver shall apply for the appointment of a day on which the public examination is to be held. Application for day for holding examination.

“Upon an order being made.”—See Act, s. 8, sub-s. 3. Order for examination, Form, p. 512. To be drawn up by Reg., R. (Ap. 92) 10, p. 313.

“The appointment of a day.”—Form of notice appointing, p. 513.

74. A day and place shall be appointed for holding the public examination, and notice of the day and place so appointed shall be given by the Official Receiver to the person who is to be examined by sending such notice in a registered letter addressed to his usual or last known address. Appointment of time and place for public examination.

“Notice . . . to the Person.”—Notice appointing day and place, p. 513. Notice to attend, p. 513.

75. The Official Receiver shall give notice of the order appointing the time and place for holding a public examination to the creditors and contributories by advertising the order in such newspapers as the Board of Trade from time to time direct, or in default of any such direction as the Official Receiver thinks fit, and shall also forward notice of the order to the Board of Trade to be gazetted. O. R. to give notice of to creditors and contributories. Advertisement. Gazetting notice.

Notice for Gazette.—See Form, p. 513.

76. If any person who has been directed by the Court to attend for public examination fails to attend at the time Default in attending.

R. (90) 77.
(Ap. 92)
27.

and place appointed by the order for holding or proceeding with the same, and no good cause is shown by him for such failure, or if before the day appointed for the examination the Official Receiver satisfies the Court that such person has absconded or that there is reason for believing that he is about to abscond with the view of avoiding examination, it shall be lawful for the Court, upon its being proved to the satisfaction of the Court that the order for attendance at the public examination was duly served, without any further notice to issue a warrant for the arrest of the person required to attend, or to make such other order as the Court shall think just.

"A warrant."—Form, p. 514. This warrant is to be issued in Central Office, R. (Ap. 92) 13, p. 314. Applications for committal to prison for contempt are to be heard before Judge in open Ct., R. (Ap. 92) 3 (1) (d), p. 310. As to privilege of a member of parliament under B. A., s. 27, see *Ex p. Lindsay* [1892], 1 Q. B. 327.

Duty to answer.—Act, s. 8, sub-s. 7.

Refusal to answer.—See R. (90) 17 (1).

Notes of
examina-
tion to be
filed.

77. The notes of every public examination held pursuant to the Companies (Winding-up) Act, 1890, shall, after being signed as required by the said Act, be filed with the proceedings.

"The notes."—As to appointment of shorthand writer, see R. (90) 16, Form, p. 513, and as to the heading to the notes where a shorthand writer is or is not appointed, see Forms, p. 514.

They are to be open to the inspection of creditors or contribs., s. 8, sub-s. 7.

"Signed."—Act, s. 8, sub-s. 7. Cf. *Re Rigg*, 7 Times Rep. 514.

"Be filed."—File in High Ct., R. (Ap. 92) 11, p. 373. In other courts R. (Ap. 92) 31, p. 374.

Deposi-
tions
taken at
public
examina-
tions.

27.—[Ap. 92.] Where in the course of the winding up of a company an order has been made for the public examination of persons named in the order pursuant to section 8 of the Companies (Winding-up) Act, 1890, and it appears from the examination that the persons examined, or some of them, have misapplied, or retained, or become liable, or accountable for moneys or property of the company, or been guilty of misfeasance or breach of trust in relation to the company, then in any proceedings subsequently instituted under section 10 of the said Act, on the application of the Official Receiver or Liquidator for the purpose of examining into the conduct of the said persons, or any of them, and compelling repayment or restoration to the company of any moneys or property, or contribution by way of compensation to the assets of the company by such persons, or any of them, the verified

notes of the examination of such person who was examined under the order shall, subject as hereinafter mentioned, and to any order or directions of the Court as to the manner and extent in and to which the notes shall be used, and subject to all just exceptions to the admissibility in evidence against any particular person or persons of any of the statements contained in the notes of the examinations, be admissible in evidence *any of the persons against whom the application is made who, under section 8 of the said Act and the order for the public examination, was or had the opportunity of being present at and taking part in the examination.* Provided that before any such notes of a public examination shall be used on any such application, the person intending to use the same shall, not less than *fifteen days* before the day appointed for hearing the application, *give notice of such intention to each person against whom it is intended to use such notes, or any of them, specifying the notes or parts of the notes which it is intended to read against him,* and furnish him with copies of such notes, or parts of notes (except notes of the person's own depositions), and provided also that every person against whom the application is made shall be at liberty to cross-examine or re-examine (as the case may be) any person the notes of whose examination are read, in all respects as if such person had made an affidavit on the application.

This rule is not *ultra vires*: *Re London and General Bank*, 29 L. J. N. C. 469.

"**Cross-examine.**"—See cross-examination on affidavit, R. S. C., O. 37, r. 20; O. 38, rr. 1, 28. And see R. (90) 78.

"**Notes of public examination.**"—The depositions are to be treated like an affidavit, and the deponent must attend for cross-examination if required: *Re London and General Bank*, 29 L. J. N. C. 469.

PROCEEDINGS AGAINST DELINQUENT DIRECTORS, PROMOTERS, AND OFFICERS.

78. An application under section 10 of the Companies (Winding-up) Act, 1890, shall in any Court other than the High Court be made by motion to the Court. In the High Court the application shall be made in accordance with the practice heretofore observed with reference to applications under section 165 of the Companies Act, 1862. Where the application is made by the Official Receiver or Liquidator he may make a report to the Court stating any facts and information on which he proceeds which are verified by affidavit, or derived from sworn evidence in the

Applica-
tion
against de-
linquent
directors,
officers,
and pro-
moters.

R. (90) 79, matter. Where the application is made by any other
80. person it shall be supported by affidavit.

See *ante*, Part I., Ch. XII.

"Other than the High Court."—*I.e.* Chancery Cts. of Lancaster and Durham; Cty. Cts.; Stannaries Cts.; Act, s. 1 (1), p. 4 (n.).

Application in High Court.—By summons, Form, No. 209, p. 576. The summons should state the grounds on which it is suggested that the matters complained of constitute a wrongful act or misfeasance for which the respondents are responsible: *New Mashonaland, &c., Co.* [1892], 3 Ch. 577.

Application in other Courts.—By motion, see next rule (79), and see *New Mashonaland Co., supra*.

"May make a Report."—The occasion for proceedings hereunder may arise from matter disclosed in the public examination (s. 8). The deposition taken in such examination may be used in proceedings under this section, see R. (Ap. 92) 27, p. 346.

Copies of report and affidavits must be furnished, see next rule (79).

Transfer.—See (n.) "Any proceedings," s. 3, p. 266.

Costs.—A report of the Official Receiver or a liquidator in support of a misfeasance summons is not on taxation to be treated as equivalent to a pleading or affidavit: *Anglo-Austrian Printing Co.* [1894], 2 Ch. 622. In this case, heard in court on oral evidence as between party and party:—

(a) Costs allowed for Official Receiver's Report were those generally given for drawing and copying a statement of facts.

(b) Instructions for brief were disallowed.

(c) Costs of third counsel allowed under the *very special* circumstances.

(d) Refreshers to counsel held to be in taxing officer's discretion.

(e) Costs of further consultations (beyond the first) under the circumstances were disallowed.

Proceedings in the name of the O. R.—See *ante*, p. 281.

Appeal.—An appeal lies from a decision determining the liability of a director or other officer in respect of misfeasance or otherwise; the leave of the judge is not required: Judicature Act, 1894, s. 1, sub-s. (1, b. iii.).

Notice of
 applica-
 tion by
 motion.

79. Where the application is made by motion, notice of the intended motion shall be served on every person against whom an order is sought, not less than eight days before the day named in the notice for hearing the motion. A copy of every report and affidavit intended to be used in support of the motion shall be served on every person to whom notice of motion is given not less than four days before the hearing of the motion.

"Motion."—Cf. R. (90) 5 (h).

"Copy of report," &c.—Also copies of notes of examination, see R. (Ap. 92) 27, p. 346.

PAYMENT INTO AND OUT OF A BANK.

Payments
 out of
 Bank of
 England.

80. All payments out of the Companies Liquidation Account shall be made in such manner as the Board of Trade may from time to time direct.

Act.—See s. 11, p. 282.

81. Where the Liquidator is authorised to have a special bank account he shall forthwith pay all moneys received by him into that account to the credit of the Liquidator of the company. All payments out shall be made by cheque payable to order, and every cheque shall have marked or written on the face of it the name of the company, and shall be signed by the Liquidator, and shall be countersigned by at least one member of the committee of inspection, and by such other person, if any, as the committee of inspection may appoint.

Act.—See s. 11, p. 282.

Forms.—See pp. 515, 516.

R. (90) 81-83.

Special bank account.

82. Where application is made to the Board of Trade to authorise the Liquidator to make his payments into and out of a special bank account the Board of Trade may grant such authorisation for such time and on such terms as they may think fit, and may at any time order the account to be closed if they are of opinion that the account is no longer required for the purposes mentioned in the application.

Act.—See s. 11, p. 282.

Forms.—See pp. 515, 516.

Application by committee of inspection and authority for special bank account.

LIST OF CONTRIBUTORIES.

83. The Liquidator shall with all convenient speed after his appointment settle a list of the contributories of the company, and shall appoint a day for that purpose. The list of contributories shall contain a statement of the address of, and the number of shares or extent of interest to be attributed to each contributory, and shall distinguish the several classes of contributories. As regards representative contributories the Liquidator shall observe the requirements of section 99 of the Companies Act, 1862.

Liquidator to settle list of contributories.

Act.—See s. 13. C. A. (62), ss. 98, 99.

"The Liquidator."—This term includes an O. R. when acting as Provisional Liq.; he may, therefore, settle the list: *Re English Bank* [1892], 1 Ch. 391, and see R. (90) 115. The duties imposed by the C. A. (62), ss. 98, 99, on the "Court" are now imposed on the Liq.; see the above rule and Act, s. 13.

"With all convenient speed, settle."—The importance of settling this list is well known, because no call can be made until after it is settled, and there is a tendency for assets of a company which remain to be called up from the contribs. to disappear where there is delay in settling the list and making the calls: *Re English Bank, supra*.

"List of contributories."—Definition of contributory, C. A. (62), s. 74. Form, p. 555.

"Section 99 of Companies Act, 1862."—See Appendix.

R. (90) 84-88.

Appoint-
ment of
time and
place for
settlement
of list.

84. The Liquidator shall give notice in writing of the time and place appointed for the settlement of the list of contributories to every person whom he proposes to include in the list, and shall state in the notice to each person in what character and for what number of shares or interest he proposes to include such person in the list.

"**Shall give notice.**"—Form, p. 555. As to service of notices, see R. (90) 21.

Settle-
ment of
list of
contribu-
tories.

85. On the day appointed for settlement of the list of contributories, the Liquidator shall hear any person who objects to being settled as a contributory, and after such hearing shall finally settle the list, which when so settled shall be the list of contributories of the company.

"**On the day appointed.**"—See Notice, Form, p. 555.

"**Shall finally settle.**"—Certificate of, Form, p. 558.

Notice to
contribu-
tories.

86. The Liquidator shall forthwith give notice to every person whom he has finally placed on the list of contributories, stating in what character and for what number of shares or interest he has been placed on the list, and in the notice inform such person that any application for the removal of his name from the list or for a variation of the list, must be made to the Court by summons within 21 days from the date of the service on the contributory or alleged contributory of notice of the fact that his name is settled in the list of contributories.

"**Forthwith give notice.**"—Notice of final settlement, Form, p. 559, Service of, R. (90) 21. Affidavit of service of notice, p. 556.

"**Form of summons.**"—See p. 560. The form of notice (p. 559) does not state how the application is to be made. The time may be extended, see next rule.

Applica-
tion to the
Court to
vary the
list.

87. Subject to the power of the Court to extend the time or to allow an application to be made notwithstanding the expiration of the time limited for that purpose, no application to the Court by any person who objects to the list of contributories as finally settled by the Liquidator shall be entertained after the expiration of 21 days from the date of the service on such person of notice of the settlement of the list.

"**To extend.**"—R. (90) 176.

"**An application.**"—By summons, see R. (90) 86, *supra*; R. (Ap. 92) 3 (3), 5, p. 311, and (n.). Act, s. 24. General Form of, p. 485; Order, p. 560.

Variation
of or addi-
tion to list
of contri-
butories.

88. The Liquidator may from time to time vary or add to the list of contributories, but any such variation or

addition shall be made in the same manner in all respects as the settlement of the original list. R. (90) 89-91.

"Vary."—The Liq. may not "rectify" the list without special leave, Act, s. 13.

"Or add to."—Supplemental list of contribs., Form, p. 558.

COLLECTION AND DISTRIBUTION OF ASSETS.

89. The duties imposed on the Court by section 98 of the Companies Act, 1862, with regard to the collection of the assets of the company and the application of the assets in discharge of the company's liabilities shall be discharged by the Liquidator as an officer of the Court subject to the control of the Court. Collection and distribution of company's assets by liquidator.

"By section 98."—The Court "shall cause the assets of the company to be collected and applied in discharge of its liabilities." As to his discretion in distributing, Act, s. 23, sub-s. 4.

"By the liquidator."—See R. (90) 83 (n.), p. 349.

"As an officer of the Court."—Appeals from Liq., s. 24, p. 293, note.

90. For the purpose of the discharge by the Liquidator of the duties imposed by section 98 of the Companies Act, 1862, as varied by section 13 of the Companies (Winding-up) Act, 1890, and the last preceding Rule, the Liquidator shall for the purpose of acquiring or retaining possession of the property of the company, be in the same position as if he were a Receiver of the property appointed by the High Court, and the Court may, on his application, enforce such acquisition or retention accordingly. Powers of liquidator.

Receiver.

"For the purpose of . . . section 98."—That is, for the purpose of settling the list, rectifying the register, collecting assets, and discharging liabilities of company.

"And the Court may."—There is no jurisdiction in a County Court to determine a question between the liquidator and a stranger, arising out of a transaction prior to the winding-up: *Re Ilkley Hotel Co.* [1893], 1 Q. B. 248.

91. The powers conferred on the Court by section 100 of the Companies Act, 1862, shall be exercised by the Liquidator. Any contributory for the time being on the list of contributories, trustee, receiver, banker, or agent or officer of a company which is being wound up under order of the Court shall, on notice from the Liquidator and within such time as he shall by notice in writing require, pay, deliver, convey, surrender, or transfer to or into the hands of the Liquidator any sum of money or balance, books, papers, estate, or effects which happen to be in his Power of liquidator to require delivery of property.

- R. (90) 92. hands for the time being and to which the company is *primâ facie* entitled.

See Act, s. 13, p. 284.

"C. A. (62), section 100."—This section (see Appendix) gives the "Court" power to require the delivery up of property.

"On notice," &c.—Form 62, p. 518. Service of, see R. (90) 21.

Lien of Company's Solicitor.—See *ante*, Part I., Ch. VI., p. 79.

CALLS.

Calls by liquidator. **92.** The powers and duties of the Court in relation to making calls upon contributories conferred by section 102 of the Companies Act, 1862, shall and may be exercised by the Liquidator as an officer of the Court subject to the provisions of section 13 of the Companies (Winding-up) Act, 1890, and to the following regulations:—

"C. A. (62), section 102."—This gives the "Court" power to make calls. See *Fowler v. Broads Patent Night Light Co.* [1893], 1 Ch. 721, cited *ante*, Part I., Ch. IX., p. 184.

"Subject to, &c., section 13."—See s. 13, and note the proviso which forbids Liq. to make call without special leave of Ct. or sanction of C. of I.

Where there is a committee of inspection.

- (1.) Where the Liquidator desires to make any call on the contributories, or any of them, for any purpose authorised by the Act, if there is a committee of inspection he may summon a meeting of such committee for the purpose of obtaining their sanction to the intended call.

"Committee of inspection."—See generally as to, Act, s. 9. If no C. of I., see sub-s. 5, *infra*.

"May summon."—Form 179, p. 563.

"Their sanction."—Form of resolution of C. of I. sanctioning call, p. 564.

Notice of meeting.

- (2.) The notice of the meeting shall be sent to each member of the committee of inspection in sufficient time to reach him not less than seven days before the day appointed for holding the meeting, and shall contain a statement of the proposed amount of the call, and the purpose for which it is intended. Notice of the intended call and the intended meeting of the committee of inspection shall also be advertised once at least in a London newspaper, and where the winding-up is not in the High Court also in a newspaper circulating in the district of the Court in which the winding-up is being conducted. The advertisement shall state the time and place of the intended meeting of the committee of inspection, and that each

contributory may either attend the said meeting and be heard, or make any communication in writing to the Liquidator or members of the committee of inspection to be laid before the meeting, in reference to the said intended call.

R. (90) 93, 94.

Contributory may make representations.

Forms.—See pp. 563, 564.

(3.) At the meeting of the committee of inspection any statements or representations made either to the meeting personally or addressed in writing to the Liquidator or members of the committee by any contributory shall be considered before the intended call is sanctioned.

Representations made to be considered.

(4.) The sanction of the committee shall be given by resolution which shall be passed by a majority of the members present.

Resolution sanctioning call.

Form.—See p. 564. Notice of call sanctioned, p. 564.

(5.) Where there is no committee of inspection the Liquidator shall not make a call without obtaining the leave of the Court.

Where no committee.

See Act, s. 13, and next rule. See also s. 9, sub-s. 9, R. (90) 169.

93. Every application to the Court for leave to make any call on the contributories, or any of them, for any purpose authorised by the Acts, shall be made by summons stating the proposed amount of such call, and such summons shall be served four clear days at the least before the day appointed for making the call on every contributory proposed to be included in such call; or if the Court so directs notice of such intended call may be given by advertisement, without a separate notice to each contributory.

Application to the Court for leave to make a call.

Notice by advertisement.

Forms.—See pp. 563-571.

"Shall be served."—Service, R. (90) 21.

94. When, in pursuance of a resolution of the committee of inspection or an order of the Court, a call has been made by the Liquidator, a copy of the resolution or order shall be forthwith served upon each of the contributories included in such call, together with a notice from the Liquidator specifying the amount or balance due from such contributory in respect of such call, but such resolution or order need not be advertised unless for any special reason the Court so directs.

Service of notice of a call.

"Order of Court."—Order sanctioning call where no C. of L., Form 187, p. 567.

"Shall be served."—Service, R. (90) 21.

E.W.

R. (90) 95-98. **Death of shareholder before service.**—See *New Zealand, &c., Co. v. Peacock* [1894], 1 Q. B. 623.
 (Dec. (92). **"Together with a notice."**—Form 188, p. 567.

Enforce-
ment of
call.

95. The payment of the amount due from each contributory on a call may be enforced by order of the Court to be made in Chambers on summons by the Liquidator.

Form.—See pp. 568, 569. *Affidavit of service of application for call* must also accompany, see note, p. 568. The Liq. may also bring an action: *Westmoreland, &c., Co. v. Fielden* [1891], 3 Ch. 15.

"By order."—The order is drawn up by the Reg., R. (Ap. 92) 10, p. 313, and filed, see *"File, &c.,"* p. 373.

Appeal.—An appeal lies from a decision determining the liability of a contributory; the leave of the judge is not required: *Judicature Act*, 1894, s. 1, sub-s. (1, b. iii.).

PROOFS.

Proof of
debt.

96. Every creditor shall prove his debt.

Proof.—Generally, see *ante*, Part I., Ch. VII.

Forms.—See pp. 543-546.

Fees on proof.—See table, p. 388.

See C. A. (62), s. 107, which empowers the "Court" to fix certain days on which creditors are to prove or to be excluded. By Act, s. 13, rules may be made empowering a liquidator to exercise such power. No such rule has, however, been made. See notes to s. 13, *ante*, p. 285.

"Creditor."—A person shall not vote until debt proved *and* proofs duly lodged, Act, 1 Sched. (6), p. 300, and note to Form 136, p. 545; and as to lodging, R. (90) 108.

"His debt."—As to unliquidated or contingent debts, see Act, 1 Sched. (7) (8). As to debt on bills and notes, *ib.* (9). Trade discounts are to be deducted, R. (90) 102.

As to priority of certain debts over others, see *Preferential Payments in Bankruptcy Act*, 1888, Appendix.

Mode of
proof.

97. A debt may be proved by delivering or sending through the post in a prepaid letter to the Official Receiver, or, if a Liquidator has been appointed, to the Liquidator, an affidavit verifying the debt.

Forms.—See pp. 543-546.

Time for Lodging Proofs.—R. (90) 108, *infra*.

"Or sending."—See R. (90) 21, and (n.), p. 320.
 See *Re Mercantile Bk., &c.*, 36 Sol. Jo. 303.

Verifica-
tion of
proof.

98. The affidavit may be made by the creditor himself, or by some person authorised by or on behalf of the creditor. If made by a person so authorised, it shall state his authority and means of knowledge.

Before
whom

R. [Dec. 92.] An affidavit of proof of debt may be sworn before any officer of the Board of Trade or any clerk of an

official receiver duly authorized in writing by the Court or the Board of Trade in that behalf. **R. (90) 99-104.**

99. The affidavit shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers, if any, by which the same can be substantiated. The Official Receiver or Liquidator may at any time call for the production of the vouchers. **affidavit may be sworn. Contents of proof.**

Forms.—See pp. 543-545.

100. The affidavit shall state whether the creditor is or is not a secured creditor. **State-ment of security.**

See Act, 1 Sched. (8) (9).

"Secured Creditor."—See Judicature Act, 1875, s. 10. As to the courses open to a secured credor., see *ante*, Part I., Ch. VII., p. 100.

101. A creditor shall bear the cost of proving his debt, unless the Court otherwise orders. **Costs of proof.**

On a successful appeal from the rejection of a proof the applicant is allowed his costs, not of the proof, but of the appeal out of the assets: *Re National Whole Meal, &c., Co.* [1892], 2 Ch. 457.

102. A creditor proving his debt shall deduct therefrom all trade discounts, but he shall not be compelled to deduct any discount, not exceeding five per centum on the net amount of his claim, which he may have agreed to allow for payment in cash. **Discount.**

103. When any rent or other payment falls due at stated periods, and the order to wind up is made at any time other than one of those periods, the person entitled to the rent or payment may prove for a proportionate part thereof up to the date of the winding-up order as if the rent or payment grew due from day to day. **Periodical payments.**

As to rent generally, see *ante*, Part I., Ch. V., p. 67.

104. On any debt or sum certain, payable at a certain time or otherwise, whereon interest is not reserved or agreed for, and which is overdue at the date of the winding-up order, the creditor may prove for interest at a rate not exceeding four per centum per annum to the date of the commencement of the winding-up from the time when the debt or sum was payable, if the debt or sum is payable by virtue of a written instrument at a certain time, and if payable otherwise, then from the time when a demand in writing has been made giving notice that interest will be claimed from the date of the demand until the time of payment. **Interest.**

values Company Proceedings, 7th Ed (1898) p. 825: "It was long since settled that where a winding up involves the redemption of a bill of exchange, the holder is entitled to receive the value and obtain payment."

R. (90)
105-107.

As to interest generally, see *ante*, Part I., Ch. VII., p. 97.
"Secured creditor."—A secured creditor, who has exhausted his security without satisfying his debt, is not entitled to apply the proceeds of the security in payment, first of interest subsequent to the winding-up, and then in reduction of principal, and to prove in the winding-up for the balance of the principal. His proof must be limited to what was due for principal and interest at the commencement of the winding-up, after deducting therefrom proceeds of sale or realization received in respect of the security: *Quartermaine's Case* [1892], 1 Ch. 639. He is entitled, however, to set off profits realized from the security since the winding-up against interest accrued during the same period: *ib.*

Proof for
debt
payable at
a future
time.

105. A creditor may prove for a debt not payable when the winding-up order was made, as if it were payable immediately, subject to a rebate of interest at the rate of five per centum per annum computed from the date of the winding-up to the time when the debt would have become payable according to the terms on which it was contracted.

Where the debt is payable at a future time, with interest in the mean time, the creditor may prove for interest accruing after the date of the winding-up: *Re Browne and Wingrove* [1891], 2 Q. B. 574. In such a case the proper course is to prove the principal sum as a present debt; then, under this rule, to deduct a rebate of interest at 5 per cent. from the dividends upon it; and then to value the liability to pay interest, and prove for that value, the dividend on which is to be paid without any rebate. If the rate of interest contracted for is 5 per cent., the proper course is simply to prove for the principal sum as a present debt, without any rebate: *ib.*

Work-
men's
wages.

106. In any case in which it appears from the statement of affairs that there are numerous claims for wages by workmen and others employed by the company, it shall be sufficient if one proof for all such claims is made either by a foreman or by some other person on behalf of all such creditors. Such proof shall have annexed thereto, as forming part thereof, a schedule setting forth the names of the workmen and others, and the amounts severally due to them. Any proof made in compliance with this rule shall have the same effect as if separate proofs had been made by each of the said workmen and others.

Form.—See p. 545. See Exemption in Table of Fees, p. 388.

Produc-
tion of
bills of
exchange
and prom-
issory
notes.

107. Where a creditor seeks to prove in respect of a bill of exchange, promissory note, or other negotiable instrument or security on which the company is liable, such bill of exchange, note, instrument, or security must, subject to any special order of the Court made to the contrary, be produced to the Official Receiver, chairman of a meeting, or Liquidator, as the case may be, and be marked by him

*been marked by the Official Receiver as required: Hudson & the
Dea Co. 114 Ch. 2d. 859 recently approved and followed
by C.A. in Wallace & Mercer v. National Automatic Machine
Co. (1894) 2 Ch. 327. "G. Thompson & Hudson & R.
4 H.L. 1. Wallingford & Mutual Society 5 App. Ca. 685*

before the proof can be admitted either for voting or for any purpose.

R. (90)
108-111.

"In respect of a bill," &c.—As to voting in respect of debt secured by bill or note, see Act, 1 Sched. (9).

108. A proof intended to be used at the first meeting of creditors or at an adjournment thereof shall be lodged with the Official Receiver not later than the time mentioned for that purpose in the notice convening the meeting, or adjourned meeting.

Time for
lodging
proofs.

"Shall be lodged."—See Act, 1 Sched. (6). Form of notice of first meeting, referring to lodgment of proof, Form 35, p. 510. Comp. R. (Ap. 92) 29, p. 359; R. (90) 122 (1).

"Time for dealing with Proofs."—See R. (Ap. 92) 29, *infra*, p. 359; R. (90) 122 (1), (2), p. 360.

109. Where a Liquidator is appointed all proofs of debts that have been received by the Official Receiver shall be handed over to the Liquidator. But the Official Receiver shall first make a list of such proofs, and take a receipt thereon from the Liquidator for such proofs.

Trans-
mission of
proofs to
liquidator.

"A liquidator is appointed."—See s. 4, sub-s. 3. When not appointed, see s. 6, sub-s. 3.

ADMISSION AND REJECTION OF PROOFS, AND APPEAL TO THE COURT.

110. The Liquidator shall examine every proof and the grounds of the debt, and in writing admit or reject it, in whole or in part, or require further evidence in support of it. If he rejects a proof he shall state in writing to the creditor the grounds of the rejection.

Examina-
tion of
proof.

"The Liquidator."—The O. R. is to have all the powers of Liq. in this behalf, R. (90) 115, *infra*.

"Every proof."—See R. (90) 96; 1 Sched. (11).

"And in writing admit or," &c.—Form, see p. 546. He may examine a set-off for the purpose of arriving at the amount of the proof to be allowed: *Re National Whole Meal, &c., Co.* [1892], 2 Ch. 467. As to vexatious rejection of proof, see *Re Smith*, 17 Q. B. D. 448, *ante*, p. 292.

Time for.—When the Liq. is not O. R., see R. (90) 120, *infra*. When the O. R. is Liq., R. (Ap. 92) 29, p. 359.

111. If a creditor or contributory is dissatisfied with the decision of the Liquidator in respect of a proof, the Court may, on the application of the creditor or contributory, reverse or vary the decision; but, subject to the power of the Court to extend the time, no application to reverse or vary the decision of the Liquidator rejecting a proof shall

Appeal by
creditor or
contribu-
tory.

R. (90)
112-115.

be entertained unless notice of the application is given before the expiration of 21 days from the date of the rejection.

"A creditor."—Cf. R. (90) 96 (n.), *supra*.

"Is dissatisfied."—As to appeal against Liq., see Act, s. 24, p. 293.

An appeal must in the High Court be by summons in Chambers: *Re National Whole Meal, &c.* [1892], 2 Ch. 457.

Time after notice of intention to declare dividend.—If the appeal is against the decision of the Liq. rejecting a proof after the date mentioned in the notice of intention to declare a dividend as the latest date up to which proofs may be lodged, it must be within 7 days of notice of the decision appealed against, R. (90) 122 (2).

Costs of successful application.—On a successful appeal from the rejection of a proof, the applicant is allowed his costs, not of the proof but of the appeal, out of the assets: *Re National Whole Meal, &c., Co., supra*. As to personal liability of Liq. for costs, R. (90) 121, p. 360.

Quære, whether, if a creditor do not object, he can afterwards appeal: *Re Canadian Pacific*, 40 W. R. 40.

As to procedure by Liq. where creditor appeals, see R. (90) 118, *infra*.

Appeal.—An appeal lies from a decision determining the claim of a creditor; the leave of the judge is not required: Judicature Act, 1894, s. 1, sub-s. (1, b. iii.).

Expung-
ing at in-
stance of
liquidator.

112. If the Liquidator thinks that a proof has been improperly admitted, the Court may, on the application of the Liquidator, after notice to the creditor who made the proof, expunge the proof or reduce its amount.

"Improperly admitted."—(?) By the O. R. who has all the Liq. powers, R. (90) 115, or by Chairman, Act, 1 Sched. (11).

Set-off.—If a set-off to the proof is alleged by the company, the proof should be admitted subject to an application to expunge or reduce hereunder: *Re National Whole Meal, &c., Co.* [1892], 2 Ch. 457.

Expung-
ing at in-
stance of
creditor
or contri-
butory.
Oaths.

113. The Court may also expunge or reduce a proof upon the application of a creditor or contributory if the Liquidator declines to interfere in the matter.

See R. (90) 118, *infra*.

114. For the purpose of any of his duties in relation to proofs, the Liquidator may administer oaths and take affidavits.

"Oaths and affidavits."—Includes affirmations and declarations: Interp. Act, 1889, s. 3. As to fees on, see p. 388. As to swearing affidavit of proof, see R. (Dec. 92), *supra*, p. 354.

Official
receiver's
powers,
&c.

115. The Official Receiver, before the appointment of a Liquidator, shall have all the powers of a Liquidator with respect to the examination, admission, and rejection of proofs, and any act or decision of his in relation thereto shall be subject to the like appeal.

"The Official Receiver before," &c.—See definition, R. (90) 2.

"Appeal."—See (n.) "Is dissatisfied," R. (90) 111, *supra*; R. (90) 118, *infra*.

116. The Official Receiver, where no other Liquidator is appointed, shall, before payment of a dividend, file all proofs tendered in the winding-up, with a list thereof, distinguishing in such list the proofs which were wholly or partly admitted, and the proofs which were wholly or partly rejected.

R. (90)
116-119.
(Ap. 92)
29.

—
Filing
proofs by
official
receiver.

"Where no other . . . is appointed."—See Act, s. 6 (3).

"File."—In High Court, R. (Ap. 92) 11, p. 373. In courts other than High Court, R. (Ap. 92) 31, p. 374.

117. Every Liquidator other than the Official Receiver shall, on the first day of every month, file with the proceedings a certified list of all proofs, if any, received by him during the month next preceding, distinguishing in such lists the proofs admitted, those rejected, and such as stand over for further consideration; and, in the case of proofs admitted or rejected, he shall place the proofs on the file of proceedings.

Proofs to
be filed.

"File."—See "File of Proceedings," p. 373.

118. The Official Receiver, or, as the case may be, the Liquidator, shall, within three days after receiving notice from a creditor of his intention to appeal against a decision rejecting a proof, file such proof, with a memorandum thereon of his disallowance thereof.

Procedure
where
creditor
appeals.

"After receiving Notice."—See R. (90) 111, *supra*.

"Appeal."—See R. (90) 111 (n.), *supra*.

"File."—See R. (90) 116 (n.), *supra*.

[119. This Rule is annulled by R. (Ap. 92) 34, p. 385, and the following rule substituted.]

29. [Ap. 92.] Subject to the power of the Court to extend the time, the Official Receiver as Liquidator, not later than fourteen days from the latest date specified in the notice of his intention to declare a dividend as the time within which such proofs must be lodged, shall in writing either admit or reject wholly or in part every proof lodged with him, or require further evidence in support of it.

Time for
admission
or rejection
of
proofs by
official
liquidator.

Comp. next rule.

"Extend Time."—R. (90) 176.

"The O. R. as Liq."—See R. (90) 115, *supra*. As to the time where the Liq. is other than O. R., see R. (90) 120, *infra*.

Forms.—See p. 546.

"Specified in the notice," &c.—The Form, p. 546, specifies a date within which debts are to be proved, see R. (90) 122 (1), (2), *infra*.

"Admission or rejection."—For voting purposes, see Act, 1 Sched. (11).

R. (90)
120-122.

Time for
admission
or rejection
of
proofs by
liquidator.

120. Subject to the power of the Court to extend the time, the Liquidator, other than the Official Receiver, within twenty-eight days after receiving a proof, which has not previously been dealt with, shall in writing either admit or reject it wholly or in part, or require further evidence in support of it. Provided that where the Liquidator has given notice of his intention to declare a dividend, he shall within fourteen days after the date mentioned in the notice as the latest date up to which proofs must be lodged examine and in writing admit or reject every proof which has not been already dealt with, and give notice of his decision rejecting a proof wholly or in part to the creditors affected thereby.

Comp. R. (Ap. 92) 29, p. 359, *supra*.

"**Extend Time.**"—R. (90) 176.

"**Other than O. R.**"—See R. (Ap. 92) 29, p. 359, *supra*.

"**Admit or reject.**"—He may apply to have it expunged, R. (90) 112.

Costs of
appeals
from decisions
as to proofs.

121. The Official Receiver shall in no case be personally liable for costs in relation to an appeal from his decision rejecting any proof wholly or in part.

"**The Official Receiver.**"—As to his powers of admitting, &c., R. (90) 115, *supra*. As to liquidator's liability, *Ex p. Marsh*, 1 Mac. & G. 302; *Ex p. Hall*, 1 De G. M. & G. 1.

DIVIDENDS.

Notice of
intended
dividend.

122.—(1.) Not more than two months before declaring a dividend, the Liquidator shall give notice of his intention to do so to the Board of Trade in order that the same may be gazetted, and at the same time to such of the creditors mentioned in the statement of affairs as have not proved their debts. Such notice shall specify the latest date up to which proofs must be lodged which shall be not less than fourteen days from the date of such notice.

Payment of Dividends.—See Regulation 11 of B. of T., Jan. 1893, *post*, p. 394.

"**The Liquidator.**"—Or the O. R. acting as Liq., R. (Ap. 92) 29, p. 359.

"**Not more than Two Months.**"—See as to postponement, (1), *infra*.

Forms.—See pp. 346, 347.

"**Shall Specify the Latest Date.**"—The Form (138) specifies the time for *proving the debt*; compare with Form, No. 140, p. 546.

"**Must be Lodged.**"—See R. (Ap. 92) 29, *supra*, p. 359.

Notice of
appeal.

(2.) Where any creditor, after the date mentioned in the notice of intention to declare a dividend as the latest date up to which proofs may be lodged, appeals against the

decision of the Liquidator rejecting a proof, notice of appeal shall, subject to the power of the Court to extend the time in special cases, be given within seven days from the date of the notice of the decision against which the appeal is made, and the Liquidator may in such case make provision for the dividend upon such proof, and the probable costs of such appeal in the event of the proof being admitted. Where no notice of appeal has been given within the time specified in this rule, the Liquidator shall exclude all proofs which have been rejected from participation in the dividend.

R. (90)
122, 123.

Time for.

Where no
appeal.

"Mentioned in the notice."—See sub-s. 1, *supra*.

"Appeals as to proofs generally."—See R. (90) 111, *supra*. The time under that rule is 21 days.

(3.) Immediately after the expiration of the time fixed by this rule for appealing against the decision of the Liquidator he shall proceed to declare a dividend, and shall give notice to the Board of Trade (in order that the same may be gazetted), and shall also send a notice of dividend to each creditor whose proof has been admitted.

Gazette.

Payment of Dividends.—See Regulation 11 of B. of T., Jan. 1893, *post*, p. 394.

Forms.—See pp. 546, 547.

(4.) If it becomes necessary, in the opinion of the Liquidator and the committee of inspection, to postpone the declaration of the dividend beyond the limit of two months, the Liquidator shall give a fresh notice of his intention to declare a dividend to the Board of Trade in order that the same may be gazetted; but it shall not be necessary for the Liquidator to give a fresh notice to such of the creditors mentioned in the statement of affairs as have not proved their debts. In all other respects the same procedure shall follow the fresh notice as would have followed the original notice.

Where
declara-
tion of
dividend
postponed
beyond
two
months.

"And the C. of I."—If none, see s. 9, sub-s. 9; R. (90) 169.

Payment of Dividends.—See Regulations 11 of B. of T., Jan. 1893, *post*, p. 394.

PROXIES.

123.—(1.) A proxy shall be lodged with the Official Receiver or Liquidator not later than four o'clock in the afternoon of the day before the meeting or adjourned meeting at which it is to be used.

Time for
lodging.

R. (90)
124.
(Ap. 92)
30.

Proxies—Summary.—Credors. and contribs. may vote by proxy, 1 Sched. 12, p. 302, even though blind or incapable, if the proxy is given as provided by R. (90) 125. The proxy must be in the prescribed Form, see Nos. 130, 131; 1 Sched. 13. Must be *issued* by O. R. or Liq., and the written parts must be in handwriting of person giving it, *ib.* Forms must be sent to credors. and contribs. *with the notice* calling the first meeting, and no names or descriptions of persons must be inserted therein before it is sent, *ib.* 14. A general proxy may be given to any person (not being a minor, R. (90) 123) in the *regular employment* of person giving it, and the position of such person must be stated, 1 Sched. 15, and the O. R. may be appointed, *ib.* 19. Special proxies may also be given to any person (not being a minor, R. (90) 123) to vote at specified meeting, as to any question arising at a specified meeting, 1 Sched. 16. It must be *lodged* with O. R. not later than four in afternoon of day before meeting, R. (90) 123. But if for use at *first* meeting then not later than the time mentioned for that in the notice calling the meeting, see Form, No. 35, R. (Ap. 92) 30, *infra*. If the O. R. holds proxies and cannot attend the meeting, he may depute a person under his official control to use them for him, R. (90) 124. If a Liq. solicits proxies he may forfeit his remuneration, 1 Sched. 18. Proxies are not to vote on resolution which would put himself or his employer, &c., in a position to receive remuneration out of estate, *ib.* (24). But on the question of appointing himself Liq. a person may vote and use special proxies, *ib.*

Forms, general, p. 130; special, p. 131.

"Of the Day before the Meeting."—Notice of first meeting, 1 Sched. (2), p. 299. Notice of general meeting, R. (90) 48, 49.

Proxies sent from abroad.—See *English, Scottish, and Australian Bank* [1893], 3 Ch. 385.

How votes of proxies are to be taken.—Where at a meeting some members are present in person and some by proxy, the chairman is to count the votes of members present in person, and also those present by proxy. But the votes of these latter are to be counted as the votes of persons actually present, and not according to the number of shares they hold: *Re Bidwell* [1893], 1 Ch. 603.

Proxy demanding poll.—Apparently a proxy cannot demand a poll: *Re Haven Gold, &c.*, 20 C. D. 151.

No minor
to be
proxy.

Proxies at
first meet-
ing.

(2). No person shall be appointed a general or special proxy who is a minor.

30.—[Ap. 92.] A proxy intended to be used at the first meeting of creditors or contributories, or an adjournment thereof, shall be lodged with the Official Receiver not later than the time mentioned for that purpose in the notice convening the meeting or adjourned meeting, which time shall be not earlier than 12 o'clock at noon of the day but one before nor later than 12 o'clock at noon of the day before the day appointed for such meeting, unless the Court otherwise directs.

Form.—See p. 130.

Use of
proxies by
deputy
official
receiver.

124. Where an Official Receiver who holds any proxies cannot attend the meeting for which they are given, he may, in writing, depute some person under his official

control to use the proxies on his behalf, and in such manner as he may direct.

R. (90)
125, 126.

"O. R. who holds."—The O. R. may be appointed general or special proxy, Act, 1 Sched. 19.

125. The proxy of a creditor blind or incapable of writing may be accepted, if such creditor has attached his signature or mark thereto in the presence of a witness, who shall add to his signature his description and residence; provided that all insertions in the proxy are in the handwriting of the witness, and such witness shall have certified at the foot of the proxy that all such insertions have been made by him at the request of the creditor and in his presence before he attached his signature or mark.

Filling in
where
creditor
blind or
incapable.

"Witness."—A person who is appointed by a creditor to act as his proxy, cannot himself be the attesting witness to the proxy: *Re Parrott* [1891], 2 Q. B. 151.

STATEMENTS BY LIQUIDATOR TO THE REGISTRAR OF JOINT STOCK COMPANIES.

126. The winding up of a company shall for the purposes of section 15 of the Companies (Winding-up) Act, 1890, be deemed to be concluded—

Conclu-
sion of li-
quidation.

(a.) In the case of companies wound up by order of the Court, at the date on which the order dissolving the company has been reported by the Liquidator to the Registrar of Joint Stock Companies:

"Has been reported."—See C. A. (62), ss. 111-113.

(b.) In the case of companies wound up voluntarily or under the supervision of the Court, at the date of the dissolution of the company, unless at such date any funds or assets of the company remain unclaimed or undistributed in the hands or under the control of the Liquidator, or any person who has acted as Liquidator, in which case the winding-up shall not be deemed to be concluded until such funds or assets have either been distributed or paid into the Companies Liquidation Account at the Bank of England.

See as to unclaimed funds, or undistributed assets, R. (91) 127d.

Note.—By an order of the B. of T. dated 31 Dec., 1890, and made under R. (90) 175, certain provisions were made for carrying into effect the matters referred to in s. 15 of the Act, and Rules 126 and 127 of the Rules of 90. These were subsequently replaced by the following Rules, [127 A, B, C, D], [132 A], [130 A], made under s. 26 of the Act, and dated 30 April, 1891. See Table of Rules in front of book.

R. (90)
127.

R. (Ap. 91)
127, 127A.

Times at
which
liqui-
dators'
state-
ments are
to be sent.

[Rule 127 of R. (90) was annulled as from the 31st May, 1891, by Rules dated the 30th April, 1891, and the following Rules [127, Ap. 91] (a), (b), (c), (d), substituted therefor.

[127. Ap. 91.] The statements with respect to the proceedings in and position of a liquidation of a company, the winding up of which is not concluded within a year after its commencement, shall be sent twice in every year as follows:—

“The Statements.”—See R. (91) 127a, *infra*, and Form 81, p. 523.

“Shall be sent.”—To the Registrar of J. S. Companies Act, s. 15 (1).

Where
winding-
up com-
menced on
or before
1st April,
1890, and
was not
concluded
before
1st April,
1891.

- (1.) Where the winding-up commenced on or before the 1st day of April, 1890, and was not concluded before the 1st day of April, 1891, the first statement, brought down to the 31st day of March, 1891, shall be sent within 30 days from the 1st day of May, 1891, or within such extended period as the Board of Trade, or (where the winding-up is by or subject to the supervision of the Court) as the Judge may in any particular case sanction, and the next statement, brought down to the 30th day of September, 1891, shall be sent within 30 days from that date.

“Was not concluded.”—See R. (Ap. 91) [127B], *infra*.

Where
winding-
up did *not*
commence
on or
before
1st April,
1890.

- (2.) Where the winding-up did not commence on or before the first day of April, 1890, the first statement, commencing at the date when a liquidator was first appointed and brought down to the end of 12 months from the commencement of the winding-up, shall be sent within 30 days from the expiration of such 12 months, or within such extended period as the Board of Trade may sanction.

“A Liquidator was first appointed,” &c.—The “appointment” of a Liq. is mentioned, Act, s. 4 (3), s. 6 (3), and refers to a Liq. *appointed* by the Ct. The O. R. becomes “Prov. Liq.” *virtute officii*, and is not appointed, and the “O. R. and Liq.” also becomes such *in default of appointment* of a Liq., Act, s. 6 (3).

Regula-
tions
as to
state-
ments.

- (3.) The subsequent statements shall be sent at intervals of half a year, each statement being brought down to the end of the half-year for which it is sent.

[127A. Ap. 91.]—(1.) Subject to the next succeeding rule, Form No. 75, with such variations as circumstances may require, shall be used, and the directions specified in the

Form shall (unless the Board of Trade otherwise direct) be observed in reference to every statement. R. (Ap. 91)
127B-
127D.

Form.—No. 75, p. 523. The forms in use by the B. of T. may be obtained at the office, or from a law stationer.

(2.) Every statement shall be sent in duplicate, and shall be verified by an affidavit in the Form No. 75A, with such variations as circumstances may require. To be in
duplicate.

Form.—No. 75A, p. 524.

[127B. Ap. 91.] Where the winding-up commenced on or before the first day of April, 1890, and was not concluded before the first day of April, 1891— Liquida-
tions com-
menced
before
April 1st,
1890.

(1.) The first statement shall, unless the Board of Trade, on the application of the Liquidator, otherwise direct, commence at the date when a Liquidator was first appointed. State-
ments,
when to
com-
mence.

“A Liquidator was first appointed.”—See this (n.), *supra*.

(2.) In any winding-up in which the accounts of the Liquidator have been passed in the chambers of a Judge of the Chancery Division of the High Court prior to the first day of January, 1891, and in any case in which it shall appear to the Board of Trade inexpedient to require a detailed statement of all the Liquidator's receipts and payments on account of the company, the statement may be sent in the form of such a summary of the Liquidator's accounts as the Board of Trade shall approve.

[127C. Ap. 91.] Where a Liquidator has not during any period for which a statement has to be sent received or paid any money on account of the company, he shall at the period when he is required to transmit his statement, send to the Registrar of Joint Stock Companies an affidavit of no receipts or payments in the Form No. 75A. Affidavit
of no
receipts or
payments.

Comp. R. (90) 140, p. 371, which is almost identical.

Form.—No. 75A, p. 524.

UNCLAIMED FUNDS AND UNDISTRIBUTED ASSETS IN THE HANDS OF THE LIQUIDATOR.

[127D. Ap. 91.]—(1.) All money in the hands or under the control of a Liquidator of a company representing unclaimed dividends, which for six months from the date Payment
of un-
claimed

R. (90)
128, 129.]

dividends
in hands
of liqui-
dator.

when the dividend became payable have remained in the hands or under the control of the Liquidator, shall forthwith, on the expiration of the six months, be paid into the Companies Liquidation Account.

"In the hands," &c.—Act, s. 15, sub-s. 3.

"Under the control."—As to what is to be deemed money under the control of Liq., see R. (90) 133.

"Into the Companies Liquidation Account."—Act, s. 11, p. 282. Notice by B. of T., p. 394.

Payment
of other
monies.

(2.) All other money in the hands or under the control of a Liquidator of a company, representing unclaimed or undistributed assets, which under sub-section 3 of section 15 of the Companies (Winding-up) Act, 1890, the Liquidator is to pay into the Companies Liquidation Account, shall be ascertained as on the date to which the statement of receipts and payments sent in to the Registrar of Joint Stock Companies is brought down, and the amount to be paid to the Companies Liquidation Account shall be the minimum balance of such money which the Liquidator has had in his hands or under his control during the six months immediately preceding the date to which the statement is brought down, less such part (if any) thereof as the Board of Trade may authorise him to retain for the immediate purposes of the liquidation. Such amount shall be paid into the Companies Liquidation Account within 14 days from the date to which the statement of account is brought down.

"In the hands," &c.—Act, s. 15 (3), (4).

"Into the Companies Liquidation Account."—See Act, s. 11.

Duty of
liquidator
to furnish
informa-
tion to
Board of
Trade.

128. Every person who has acted as Liquidator of any company, whether the liquidation has been concluded or not, shall furnish to the Board of Trade particulars of any money in his hands or under his control representing unclaimed or undistributed assets of the company on the 1st January 1891 or subsequently, and such other particulars as the Board of Trade may require for the purpose of ascertaining or getting in any money payable into the Companies Liquidation Account at the Bank of England. The Board of Trade may require such particulars to be verified by affidavit.

"Acted as Liquidator."—See as to the O. R. acting as Prov. Liq., R. (90) 168.

Power of
Board of

129.—(1.) The Board of Trade may at any time order any such person to submit to them an account verified by

affidavit of the sums received and paid by him as Liquidator of the company, and may direct and enforce an audit of the account.

Form.—No. 81, p. 523.

Appeal from B. of T.—Must be brought within 21 days, R. (90) 170, p. 382. Must in H. C. be heard in open Ct., R. (Ap. 92) 3 (1) (b), p. 310.

"Any such person."—This means "any person who has acted as liquidator," not "any person who has acted as liquidator *and has money in his hands*;" therefore the Board of Trade need not show that the liquidator has had funds in his hands since the date mentioned: *Re Cornish* [1895], 2 Q. B. 634; a Bankruptcy decision.

(2.) For the purposes of section 15 of the Companies (Winding-up) Act, 1890, and these Rules, the Court (as hereinafter defined) shall have and, at the instance of the Board of Trade, may exercise all the powers conferred by the Bankruptcy Act, 1883, with respect to the discovery and realization of the property of a debtor, and the provisions of Part I. of that Act with respect thereto shall, with any necessary modifications, apply to proceedings under section 15 of the Companies (Winding-up) Act, 1890.

See B. A., ss. 24, 25, 27, 162 (2).

"The Court as hereinafter," &c.—The rule here referred to, R. (90) 130, containing the definition of "the Court," is repealed. See *infra*. Practically it was similar to that in Act, s. 32 (2).

"Powers conferred by B. A.," &c.—See s. 15, sub-s. 4 (n.). This gives the B. of T. great power over the Liq. He must submit to examination of the most stringent kind, B. A., s. 24; he may, perhaps, be arrested, B. A., s. 25. He or his wife, or any person deemed capable of giving information, may be summoned before the Ct. and examined, B. A., s. 27.

[Rule 130 of R. 90 was annulled by Rules dated 30 April, 1891 (see p. 385), and the following R. 130A substituted.]

[130A. Ap. 91.] Every application by the Board of Trade for the purpose of ascertaining and getting in money payable into the Bank of England pursuant to section 15 of the Companies (Winding-up) Act, 1890—

(a.) Paragraph (a) of the rule was annulled by R. (Ap. 92) 34, p. 385. R. (Ap. 92) 16 takes the place of (a). The rule is as follows:—

16. [Ap. 92.] Every application by the Board of Trade for the purpose of ascertaining and getting in money payable into the Bank of England pursuant to section 15 of the Companies (Winding-up) Act, 1890, shall in a winding-up in the High Court to which these rules apply be made and dealt with by the Judge of the High Court upon motion.

"Section 15."—See pp. 285-288

R. (90)
130.
(Ap. 91)
130A.
(Ap. 92)
16.

Trade to
call for
verified
accounts.

Applica-
tions to
the Court
for en-
forcing
accounts
and get-
ting in
money.

R. (90)
131, 132.
(Ap. 91)
132A.

- (b.) Where the winding-up is in the Stannaries Court, shall be made upon motion before the Vice-Warden;
- (c.) Where the winding-up is in a Palatine Court or a County Court, shall be made to that Court;
- (d.) In other cases, shall be made to the Judge of the High Court who for the time being exercises the jurisdiction of the High Court in Bankruptcy, and in accordance with the practice which is observed in reference to applications by the Board of Trade under section 162 of the Bankruptcy Act, 1883.

"Exercise the Jurisdiction in Bankruptcy."—See Act, s. 2 (n.).

"In accordance with the practice," &c.—By B. A., s. 162, sub-s. 2 (c), the B. of T. may exercise *all the powers conferred by the Act* with respect to the *discovery and realization* of the property of the debtor, comp. R. (90) 129 (2), *supra*.

In bankruptcy an account may be required from a trustee who has obtained his release if he had then any undistributed funds in his hands. It is not necessary to show that a trustee has funds in his hands at the date of the application.

Appeal from B. of T.—See R. (90) 170.

Mode of
payment
into com-
panies li-
quidation
account.

131. Any Liquidator whose duty it is under section 15 of the Companies (Winding-up) Act, 1890, to pay into the Companies Liquidation Account at the Bank of England, any money representing unclaimed or undistributed assets of the company shall apply in such manner as the Board of Trade may direct to the Board of Trade for a paying-in order, which paying-in order shall be an authority to the Bank of England to receive the payment.

"Section 15."—Act, s. 15 (3), R. (90) 133, *infra*.

Companies Liquidation Account.—See Act, s. 11.

Applica-
tion for
payment
out by
person
entitled.

132. An application by a person claiming to be entitled to any money paid into the Bank of England in pursuance of section 15 of the Companies (Winding-up) Act, 1890, shall be made in such form and manner as the Board of Trade may from time to time direct, and shall, unless the Board of Trade otherwise directs, be accompanied by the certificate of the Liquidator that the person claiming is entitled, and such further evidence as the Board of Trade may direct.

See next rule, and Table of Fees, p. 388.

Applica-
tion by
liquidator
for money

[132A. Ap. 91.] Where the Liquidator requires to make payments out of money paid into the Bank of England, in pursuance of section 15 of the Companies (Winding-up)

Act, 1890, either by way of distribution or in respect of the costs and expenses of the proceedings, he shall apply in such form and manner as the Board of Trade may direct, and the Board of Trade may thereupon either make an order for the payment out to him of the sum required to make such payments, or may direct cheques to be issued to him for transmission to the persons to whom the payments are to be made.

The above rule was added by rules of April, 1891.

"**Payment out.**"—Act, s. 15 (5); s. 11 (5). R. (90) 133 (2), *infra*. Regulation B. of. T. (5), (6), p. 395. Fees, p. 389.

133. (1.) For the purpose of sub-section 3 of section 15 of the Companies (Winding-up) Act, 1890, money at the credit of the account of the Official Liquidator of any company with the Bank of England shall be deemed to be money under the control of the Official Liquidator, and when such money has remained unclaimed or undistributed for six months after the date of receipt it shall be transferred to the Companies Liquidation Account, and the Official Liquidator and Chief Clerk of the Chancery Division of the High Court shall draw and sign such cheques or orders as may be necessary for the transfer of the money.

**B. (90)
133, 134.**
to be paid
out.

Transfer
of funds
to com-
panies li-
quidation
account.

"**Under the control.**"—Act, s. 15 (3).

"**Companies Liquidation Account.**"—S. 11.

"**Chief Clerk.**"—Now the Registrar.

(2.) Any application to the Board of Trade for payment out of moneys so transferred shall be signed by the Liquidator and countersigned by the Chief Clerk of the Judge of the Chancery Division to whom the winding-up is assigned.

Applica-
tion to
Board of
Trade for
payment
out.

"**Chief Clerk.**"—Now the Registrar. As to Fees, p. 389.

INVESTMENT OF FUNDS.

134. (1.) Where the committee of inspection are of opinion that any part of the cash balance standing to the credit of the account of the company should be invested, they shall sign a certificate and request, and the Liquidator shall transmit such certificate and request to the Board of Trade.

Invest-
ment of
assets in
securities,
and reali-
zation of
securities.

See Act, s. 17 (1); Form, p. 576.

"**Committee of Inspection.**"—Act, s. 9. Where none, s. 9 (9).

(2.) Where the committee of inspection are of opinion that it is advisable to sell any of the securities in which

R. (90)
135-137.

the moneys of the company's assets are invested they shall sign a certificate and request to that effect, and the Liquidator shall transmit such certificate and request to the Board of Trade.

See Act, s. 17 (2); Form, p. 575.

ACCOUNTS AND AUDITS.

Audit of
Cash-book
by com-
mittee.

135. The committee of inspection shall not less than once every three months audit the Liquidator's Cash Book and certify therein under their hands the day on which the said book was audited.

See Act, s. 20. As to cash and other books, R. (90) 143.
Form of certificate, p. 526.

Board of
Trade
audit of
Liquidator's
accounts.

136.—(1.) Every Liquidator shall, at the expiration of six months from the date of the winding-up order and at the expiration of every succeeding six months thereafter until his release, transmit to the Board of Trade a copy of the Cash Book for such period in duplicate together with the necessary vouchers and copies of the certificates of audit by the committee of inspection. He shall also forward with the first accounts a summary of the company's statement of affairs, in such form as the Board of Trade may direct, showing thereon in red ink the amounts realized, and explaining the cause of the non-realization of such assets as may be unrealized.

B. of T. directions.—Directions as to the details of this audit have been issued by the Board of Trade. These together with the necessary forms can be obtained from the B. of T. or law stationers.

"A summary."—With the accounts, the Liq. must transmit a summary of such accounts, R. (90) 139, and a summary of the company's statement of affairs, *supra*. As to disallowing payments made, or profits, R. (90) 158.

"Cash Book."—R. (90) 144. The total weekly amount of receipts and profits is to be incorporated if the Liq. has a trading account, R. (90) 137.

Accounts
then
assets
realized.

(2.) When the assets of the company have been fully realized and distributed, the Liquidator shall forthwith send in his accounts to the Board of Trade, although the six months may not have expired.

"Send in his Account."—Act, s. 20 (2).

Certifica-
tion of
account.

(3.) The accounts sent in by the Liquidator shall be certified and verified by him.

Form.—No. 107, p. 534.

Liqui-
tator's

137.—(1.) Where the Liquidator carries on the business

of the company, he shall keep a distinct account of the trading, and shall incorporate in the Cash Book the total weekly amount of the receipts and payments on such trading account.

R. (90)
138-140.
trading
account.

“Carries on.”—Act, s. 12, R. (90) 157.

“Distinct Account of Trading.”—Form 83, p. 525.

“Cash Book.”—See R. (90) 144 (1).

(2.) The trading account shall from time to time, and not less than once in every month, be verified by affidavit, and the Liquidator shall thereupon submit such account to the committee of inspection (if any), or such member thereof as may be appointed by the committee for that purpose, who shall examine and certify the same.

Trading
account
to be
verified.

“Trading Account.”—See Form 83, p. 525.

Form of Affidavit.—See p. 526.

“If any.”—See Act, s. 9 (9).

“Who shall . . . Certify.”—Form No. 86, p. 526.

138. When the Liquidator's account has been audited, the Board of Trade shall certify the fact upon the account, and thereupon the duplicate copy, bearing a like certificate, shall be filed with the proceedings in the winding-up.

Copy of
accounts
to be filed.

“Audited.”—See R. (90) 135, 136.

“Filed.”—See “File of Proceedings,” p. 373.

139.—(1.) The Liquidator shall transmit to the Board of Trade with his accounts a summary of such accounts in such form as the Board of Trade from time to time direct, and, on the approval of such summary by the Board of Trade, shall forthwith obtain, prepare, and transmit to the Board of Trade so many printed copies thereof, duly stamped for transmission by post, and addressed to the creditors and contributories, as may be required for transmitting such summary to each creditor and contributory.

Summary
of
accounts.

“Summary.”—He is also to transmit with the first accounts a summary of the company's statement of affairs, R. (90) 136, *supra*.

Form.—This may be obtained, with proper directions, from the B. of T. or a law stationer.

(2.) The cost of printing and posting such copies shall be a charge upon the assets of the company.

Cost of
printing.

“Charge upon the Assets.”—See R. (90) 31.

140. Where a Liquidator has not since the date of his appointment or since the last audit of his accounts, as the case may be, received or paid any sum of money on account of the assets of the company, he shall, at the time when he is required to transmit his accounts to the Board of

Affidavit
of no
receipts.

R. (90)
141-143.

Trade, forward to the Board an affidavit of no receipts or payments.

Comp. [R. 127c (Ap. 91)], p. 365. See Form 82, p. 524.

Proceed-
ings on
resigna-
tion, &c.,
of liqui-
dator.

141. Upon a Liquidator resigning, or being released or removed from his office, he shall deliver over to the Official Receiver, or, as the case may be, to the new liquidator, all books kept by him, and all other books, documents, papers, and accounts in his possession relating to the office of Liquidator. The release of a Liquidator shall not take effect unless and until he has delivered over to the Official Receiver all the books, papers, documents, and accounts which he is by this rule required to deliver on his release.

"To the O. R."—Who becomes Liq. during vacancy, Act, s. 4 (4).

"Books."—See as to books to be kept by liquidator, R. (90) 143, *infra*.

"The Release of a Liquidator."—R. (90) 148. When the property has been realized as far as possible, the final dividend distributed, the rights of parties adjusted, and a final return made, the B. of T. may, on the liquidator's application, make a report and then grant a release, Act, s. 22.

Expenses
of sales.

142.—Where property forming part of a company's assets is sold by the Liquidator through an auctioneer or other agent, the gross proceeds of the sale shall be paid over by such auctioneer or agent, and the charges and expenses connected with the sale shall afterwards be paid to such auctioneer or agent, on the production of the necessary certificate of the taxing officer. Every Liquidator, by whom such auctioneer or agent is employed, shall, unless the Court otherwise orders, be accountable for the proceeds of every such sale.

BOOKS.

Record-
book.

143. The Official Receiver, until a Liquidator is appointed by the Court, and thereafter the Liquidator, shall keep a book to be called the "Record Book," in which he shall record all minutes, all proceedings had and resolutions passed at any meeting of creditors or contributories, or of the committee of inspection, and all such matters as may be necessary to give a correct view of his administration of the company's affairs, but he shall not be bound to insert in the "Record Book" any document of a confidential nature (such as the opinion of counsel on any matter affecting the interest of the creditors or contributories), nor need he exhibit such document to any person other than a member of the committee of inspection.

Books.—As to books to be kept by Liq., Act, s. 21; by officers of Court, see R. (90) 150. R. (90)
144-146.

"Resolution."—As to ordinary resolutions, see R. (Ap. 92) 25, p. 338. (Ap. 92)
11.
The chairman of first meetings is to sign minutes, 1 Sched. (23); and the Liq. is to record all resolutions at all meetings, R. (90) 143. General meetings, R. (90) 47. —

144.—(1.) The Official Receiver, until a Liquidator is appointed by the Court, and thereafter the Liquidator, shall keep a book to be called the "Cash Book" (which shall be in such form as the Board of Trade may from time to time direct), in which he shall (subject to the provisions of these Rules as to trading accounts) enter from day to day the receipts and payments made by him. Cash-
book.

Form.—This may be obtained from B. of T.

"Subject," &c.—The Liq. is to transmit a copy to B. of T., R. (90) 136; and see as to trading account, R. (90) 137.

Audit of books.—As to audit of books by C. of I. and B. of T., R. (90) 135. As to fee on forwarding, see p. 388.

(2.) The Liquidator shall submit the Record Book and Cash Book, together with any other requisite books and vouchers, to the committee of inspection (if any) when required, and not less than once every three months. Books to
be sub-
mitted to
com-
mittee.

"If any."—See Act, s. 9 (9).

FILE OF PROCEEDINGS.

[*Rules 145 and 146 of R. (90) relating to the Register and File of Proceedings were annulled by R. (Ap. 92) 34, p. 385.*]

11.—[Ap. 92.] All petitions, affidavits, summonses, orders, proofs, notices, depositions, bill of costs, and other proceedings in the High Court in a winding-up matter to which these rules apply shall be kept and remain of record in the office of the Registrar in one continuous file, and no proceeding in any winding-up matter to which these rules apply shall, from and after the commencement of these rules, be filed in the Central Office. File of
proceed-
ings in
High
Court in

The repealed rules, which were almost identical with G. O. Nov. (62), r. 57, *infra*, provided that the file should be kept by the O. R. As to summonses, the duplicate is filed, R. (Ap. 92) 9, p. 313; as to orders, see the rule, *supra*; as to proofs, the O. R. must file all proofs before paying a dividend, R. (90) 116; and on notice of appeal, R. (90) 118. The Liq., on the first of every month, must file a certified list of proofs, R. (90) 117. As to depositions, see R. (90) 77 and R. (Nov. 1895), *infra*, p. 374.

"Other proceedings."—Report of O. R. as manager, R. (90) 42 (1). Statement of affairs, R. (90) 58 (1). Certificate of extending time for statement, R. (90) 59. Certificate of B. of T. that security has been

R. (Ap. 92) given, R. (90) 67 (4). Notes of public examination, R. (90) 77. Copies of Liq.'s accounts, R. (90) 138. Memorandums of advertisements in Gazette, R. (90) 147. Report of B. of T. when seeking to examine Liq., R. (90) 171 (1).

office of the Registrar. The file of proceedings in bankruptcy is not of the nature of a record: *Ex p. Bluck*, 57 L. T. 419.

File of proceedings in Courts other than High Court.

31.—[Ap. 92.] In courts other than the High Court a file of proceedings in every winding-up matter shall be kept on which all petitions, affidavits, summonses, orders, proofs, notices, depositions, and other proceedings in the matter shall be placed and remain of record as far as possible in continuous order.

Inspection of file in all Courts.

32.—[Ap. 92.] Every person who has been a director or officer of a company which is being wound up and every duly authorised officer of the Board of Trade, shall be entitled, free of charge, and every contributory and every creditor whose claim or proof has been admitted, shall be entitled on payment of a fee of one shilling, at all reasonable times, to inspect the file of proceedings (whether in the High Court or any other Court) and to take copies or extracts from any documents therein, or to be furnished with such copies or extracts at a rate not exceeding fourpence per folio of seventy-two words.

Depositions under s. 115 of 1862 Act.—This rule included a right to take copies of depositions taken under s. 115 of the C. A. 1862, filed on a supplemental file: *Re Standard Gold Mining Co., Ltd.* [1895], 2 Ch. 645; but this decision is now annulled by a new Rule, Nov. 1895, *infra*.

Fees on application for search, and for copies, p. 388.

DEPOSITIONS OF PERSONS EXAMINED BEFORE THE COURT.

Filing and Custody of Depositions taken at Private Examinations.

[Nov. 95.]—(1.) Notwithstanding anything contained in the Companies (Winding-up) Rules, 1890-1892, the notes of the depositions of a person examined under section 115 of the Companies Act, 1862, or under any order of the Court before the Court or before any officer of the Court, or person appointed to take such an examination (other than the notes of the depositions of a person examined at a public examination under section 8 of the Companies (Winding-up) Act, 1890), shall not be placed on the file of proceedings to be open to the inspection of any creditor, contributory, or other person, other than the official receiver or liquidator, unless and until the Court shall so direct, and the Court may from time to time give such

general or special directions as it shall think expedient as to the custody and inspection of such notes, and the furnishing of copies or extracts therefrom.

(2.) This rule may be cited as the Companies (Winding-up) Rule, Nov. 1895, and shall be read and construed as forming one of the Companies (Winding-up) Rules, 1890-1892.

The rule is intended to nullify the decision in *Re Standard Gold Mining Co.* [1895], 2 Ch. 545, as to which see also *ante*, Part I., Ch. XI., p. 203.

33. [Ap. 92.] Where, in the exercise of their functions under the Acts or rules, the Board of Trade or the Official Receiver require to inspect or use the file of proceedings in any matter, the Registrar shall (unless the file is at the time required for use in Court or by him), on request, transmit the file of proceedings to the Board of Trade or Official Receiver, as the case may be.

147.—(1.) Whenever the London Gazette contains any advertisement relating to any winding-up to which these Rules apply, the Liquidator shall file with the proceedings a memorandum referring to and giving the date of the advertisement.

“London Gazette.”—See R. (90) 152.

(2.) In the case of an advertisement in a local paper, the Official Receiver shall keep a copy of the paper, and a memorandum referring to and giving the date of the advertisement shall be placed on the file.

(3.) For this purpose one copy of each local paper in which any advertisement relating to any winding-up proceeding in the Court is inserted, shall be left with the Official Receiver by the person who inserts the advertisement.

(4.) A memorandum under this Rule shall be *prima facie* evidence that the advertisement to which it refers was duly inserted in the issue of the Gazette or newspaper mentioned in it.

R. (90)
147, 148.
(Ap. 92)
32.

Use of file
by Board
of Trade
and
official
receiver.

Filing
memoran-
dum of
advertis-
ment in
Gazette.

Filing
memoran-
dum of
advertis-
ment in
local
paper.

Copies of
local paper
to be left
with O. R.
Memoran-
dum to be
evidence.

RELEASE OF LIQUIDATOR.

148. A Liquidator, before making application to the Board of Trade for his release, shall give notice of his intention so to do to all the creditors who have proved their debts and to all the contributories, and shall send with the notice a summary of his receipts and payments as Liquidator.

Applica-
tion for
release.

R. (90)
149-152.

"For his Release."—See Act, s. 22.

Forms.—Notice of intention to apply for Release, p. 532; summary to accompany notice, Form 107, p. 534. Application for, p. 533. The release does not take effect until all documents are delivered, R. (90) 141. When the release takes effect it acts as a removal of the liquidator from his office, Act, s. 22 (4). As to appeal, see s. 22 (1) and (u.).

Gazetting
release.

149. Where the Board of Trade have granted to a Liquidator his release, a notice of the order granting the release shall be gazetted. The Liquidator shall provide the requisite stamp fee for the Gazette, which he may charge against the company's assets.

BOOKS TO BE KEPT, AND RETURNS MADE, BY OFFICERS OF COURTS.

Books to
be kept by
officers of
Courts.

150. In the High Court the Chief Clerks of the Chancery Division, and in the District Registries of the High Court at Liverpool and Manchester respectively the District Registrars of the High Court, and in a Court other than the High Court, the Registrar or other officer of the Court whose duty it is to perform under direction of the Judge the duties which in a County Court are performed by the Registrar, shall keep books according to the Forms in the Appendix, and the particulars given under the different heads in such books shall be entered forthwith after each proceeding has been concluded.

"Keep Books."—See Act, s. 29; Form 91, p. 527.

"Chief Clerks."—See Interpretation, R. (Ap. 92) 35 (1), p. 386.

"The Registrar."—See Interpretation, R. (Ap. 92) 35, p. 386.

Extracts
to be sent
to Board
of Trade.

151. The officers of the Courts whose duty it is to keep the books prescribed by these Rules shall make and transmit to the Board of Trade such extracts from their books, and shall furnish the Board of Trade with such information and returns as the Board of Trade may from time to time require.

And the B. of T. is to cause a general annual report of all matters, judicial and financial, to be laid before Parliament, Act, s. 29 (2).

GAZETTING.

Gazetting
notices.

152. All notices subsequent to the making by the Court of a winding-up order in pursuance of the Act or these Rules requiring publication in the London Gazette shall be gazetted by the Board of Trade.

Osgoode Hall. June 27th.
High Court of Justice.
CHAMBERS. 1904

Before Cartwright, Master.

Traplin v. Traplin.—J. D. Montgomery, for plaintiff, moved for speedy judgment in action of ejectment. G. W. Holmes, for defendant, contra. Reserved.

Union Bank v. Macdonald.—John Jennings, for judgment creditors, obtained attaching order returnable on 30th June.

Re Scealey Trusts.—T. Langton, K.C., for trustees, obtained order for leave to pay a trust fund into court.

Before Falconbridge, C.J.

Re Farmers' Loan and Savings Co.—Judgment (G.A.B.) on petition by Toronto General Trusts Corporation, liquidators of the company, for an order fixing the remuneration of the liquidators subsequent to 1st November, 1901, and the annual or other allowance for their care and management of the estate since the commencement of the liquidation. Held, that the liquidator would be entitled to the maximum percentage which the court is accustomed to allow, and, in addition, to a fair and reasonable compensation for the care and management of the estate. Up to the present date the remuneration received by the liquidators averages only 11-2 per cent. upon the receipts and 11-2 per cent. upon disbursements, or \$31,000, less than the amount of the usual percentage upon an estate of this nature. No annual allowance has yet been made for the care and management of the estate, which has continued for nearly seven years. Looking at all the circumstances of the case, it would be preferable to allow a lump sum up to the 31st May, 1904, inclusive, to cover the liquidators' remuneration for the receipt and disbursement of the corpus since November, 1901, and the care and management of the estate from 16th December, 1897, to 1st June, 1904, a period of six and a half years, which lump sum is fixed at \$26,000. This sum it has been conceded, is reasonable and has been well earned by the liquidators, whose careful and efficient management has ensured very much to the benefit of the creditors. Reference to re Williams, 4 O.L.R. 501; re Berkeley's Trusts, 8 P.R. 193; Stinson v. Stinson, 8 P.R. 561. J. Hoskin, K.C., and W. M. Douglas, K.C., for liquidators. J. T. Small for certain debenture holders.

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"All Notices."—Notice of order to wind up, R. (90) 41. The Forms now in use were substituted by the Board of Trade by order dated 13th Feb., 1891, for those in Appendix to the Rules of 1890. **R. (90) 153, 154.**

As to filing all notices, see R. (Ap. 92) 11, 31, pp. 373, 374.

As to filing all advertisements in Gazette relating to winding-up, R. (90) 147.

153. Where any winding-up order is amended, and also in any case in which any matter which has been gazetted has been amended or altered, or in which a matter has been wrongly or inaccurately gazetted, the Board of Trade shall re-gazette such order or matter with the necessary amendments and alterations in the prescribed form, at the expense of the company's assets, or otherwise as the Board of Trade may direct. **Re-gazetting.**

LIQUIDATORS AND COMMITTEES OF INSPECTION.

154.—(1.) The remuneration of a Liquidator shall, unless the Court shall otherwise order, be fixed by the committee of inspection, and shall be in the nature of a commission or percentage of which one part shall be payable on the amount realized after deducting the sums (if any) paid to secured creditors out of the proceeds of their securities and the other part on the amount distributed in dividend. **Remuneration of liquidator where committee.**

"Remuneration of a Liquidator."—See Act, s. 27 (3). *Semble*, this means a Liq. appointed by the Ct., and does not include the O. R. when acting as "Prov. Liq." or "O. R. and Liq.," as to whose remuneration see Table B, p. 389. But cf. Interpretation Clause, "liquidator," p. 307, and clause (2) of this rule.

As to the priority of remuneration, R. (90) 31.

If the Liq. uses solicitation in procuring proxies, or his appointment, the Ct. may take away his remuneration, Act, 1 Sched. (18).

"Committee of Inspection."—See Act, s. 9. In bankruptcy the B. of T. can review the decision of the C. of I.: *Re Gallard* [1892], 1 Q. B. 532; B. A., s. 72 (2).

(2.) If there is no committee of inspection the remuneration of the Liquidator shall be in accordance with the scale of percentage payable for realizations and distributions by the Official Receiver as Liquidator. **Where no committee.**

"No Committee of Inspection."—See s. 9 (9), R. (90) 169.

"With the Scale."—If a Liq. is appointed by the Ct. (s. 6), and a committee of inspection, then the latter fix the remuneration. If a Liq. is appointed, but no committee, then he takes according to the scale, Table B, II., p. 389. The O. R., acting as "Prov. Liq." or as "O. R. and Liq.," is an officer of the Ct. (R. (90) 165), but he is also an officer, or person attached to, the B. of T., which may increase or diminish his remuneration, Act, s. 27 (2).

R. (90)
 155-158.

Limit of
 remunera-
 tion.

155. Except as provided by the Acts or these Rules, no Liquidator shall be entitled to receive out of the estate any remuneration for services rendered to the company, except the remuneration to which under the Acts and Rules he is entitled as Liquidator.

"Except as provided by the Acts," &c.—The "Acts," means the Companies Acts, 1862 to 1890, R. (90), 2. See C. A. (62), ss. 93, 133, and L. R., 3 Ch. lxiv.

"Or these Rules."—See as to priority of payment, R. (90) 31.

Purchase
 of assets
 by liqui-
 dator or
 com-
 mittee.
 Setting
 aside.

156. Neither the Liquidator nor any member of the committee of inspection of a company shall, while acting as Liquidator or member of such committee, except by leave of the Court, either directly or indirectly, by himself or any partner, clerk, agent, or servant, become purchaser of any part of the company's assets. Any such purchase made contrary to the provisions of this Rule may be set aside by the Court on the application of the Board of Trade or any creditor or contributory, and the Court may make such order as to costs as the Court shall think fit.

Liquida-
 tor not to
 purchase
 from cer-
 tain per-
 sons
 without
 Court's
 sanction.

157. Where the Liquidator carries on the business of the company, he shall not, without the express sanction of the Court, purchase goods for the carrying on of such business from any person whose connexion with the Liquidator is of such a nature as would result in the Liquidator obtaining any portion of the profit (if any) arising out of the transaction.

"Carries on."—See Act, s. 12, R. (90) 137.

"Express sanction."—As to costs of obtaining this, R. (90) 159, *infra*.

Com-
 mittee of
 inspection
 not to
 derive
 profit
 from
 winding-
 up.

158. No member of a committee of inspection, in a winding-up shall, except under and with the sanction of the Court, directly or indirectly, by himself or any employer, partner, clerk, agent, or servant, be entitled to derive any profit from any transaction arising out of the winding-up, or to receive out of the assets any payment for services rendered by him in connexion with the administration of the assets, or for any goods supplied by him to the Liquidator for or on account of the company. If it appears to the Board of Trade that any profit or payment has been made contrary to the provisions of this Rule they may disallow such payment or recover such profit, as the case may be, on the audit of the Liquidator's accounts.

Dis-
 allowing
 such
 profit.

"Sanction of Court."—The sanction of the Court cannot be given after the profit has been derived, but must be obtained before the business from which the profit is to be derived is undertaken: *Re Gallard* [1896], 1 Q. B. 68.

Solicitor.—What is “profit derived”?—The “profit derived” by a solicitor is the amount of his costs, less his disbursements out of pocket in the particular matter; no allowance can be made for general office expenses: *Re Gallard, supra.* R. (90)
159-161.

Solicitor's Managing Clerk on Committee.—When one of the members of a committee of inspection is the managing clerk of a solicitor, though it is not a breach of the rule to appoint that solicitor to be solicitor to the liquidator, yet on general principles such an appointment would be improper, and would be set aside by the Court: *per Lord Esher, M.R., Re Gallard, supra.*

“**Audit.**”—R. (90) 135, p. 370.

159. In any case in which the sanction of the Court is obtained under the two last preceding Rules, the cost of obtaining such sanction shall be borne by the person in whose interest such sanction is obtained, and shall not be payable out of the company's assets. Costs of
obtaining
sanction.

160. Where the sanction of the Court to a payment to a member of a committee of inspection for services rendered by him in connexion with the administration of the company's assets is obtained, the order of the Court shall specify the nature of the services, and shall only be given where the service performed is of a special nature. No payment shall, under any circumstances, be allowed to a member of a committee for services rendered by him in the discharge of the duties attaching to his office as a member of such committee. Sanction
of pay-
ments to
members
of com-
mittee of
inspec-
tion.

Costs out of pocket, R. (90) 31.

161.—(1.) Where a Liquidator is appointed by the Court, the Official Receiver shall forthwith put the Liquidator into possession of all property of the company of which the Official Receiver may have custody; provided that such Liquidator shall have, before the assets are handed over to him by the Official Receiver, discharged any balance due to the Official Receiver on account of fees, costs, and charges properly incurred by him, and on account of any advances properly made by him in respect of the company, together with interest on such advances at the rate of four pounds per centum per annum; and the Liquidator shall pay all fees, costs, and charges of the Official Receiver which may not have been discharged by the Liquidator before being put into possession of the property of the company, and whether incurred before or after he has been put into such possession. Discharge
of costs,
&c., before
assets
handed
over to
liquidator.

“**Is appointed.**”—See (n.) “A Liq. was first,” &c., p. 364.

“**The Liquidator shall pay.**”—These will probably be considered necessary disbursements under R. (90) 31.

R. (90)
162-165.

Lien of
O. R. on
assets.

Duty of
O. R. to
give
liquidator
informa-
tion.

(2.) The Official Receiver shall be deemed to have a lien upon the company's assets until such balance shall have been paid and the other liabilities shall have been discharged.

(3.) It shall be the duty of the Official Receiver, if so requested by the Liquidator, to communicate to the Liquidator all such information respecting the estate and affairs of the company as may be necessary or conducive to the due discharge of the duties of the Liquidator.

"The Duty of the O. R."—The liquidator is also to give information to the O. R., Act, s. 4 (3).

Where a Liq. is appointed by Ct., the O. R. must account to him, R. (90) 168 (1).

OFFICIAL RECEIVERS, AND BOARD OF TRADE.

Appoint-
ment.

162.—(1.) Judicial notice shall be taken of the appointment of the Official Receivers appointed by the Board of Trade.

Deputy
official
receiver.

(2.) When the Board of Trade appoints any officer to act as deputy for or in the place of an Official Receiver, notice thereof shall be given by letter to the Court to which such Official Receiver is or was attached. The letter shall specify the duration of such acting appointment.

As to assistant O. R., see R. (90) 165, *infra*.

Status,
&c., of
deputy.

(3.) Any person so appointed shall, during his tenure of office, have all the status, rights, and powers, and be subject to all the liabilities of an Official Receiver.

Removal
of official
receiver.

163.—(1.) Where an Official Receiver is removed from his office by the Board of Trade, notice of the order removing him shall be communicated by letter to the Court to which the Official Receiver was attached.

Personal
perform-
ance of
duties.

164. The Board of Trade may, by general or special directions, determine what acts or duties of the Official Receiver in relation to the winding up of companies are to be performed by him in person, and in what cases he may discharge his functions through the agency of his clerks or other persons in his regular employ, or under his official control.

Assistant
official
receivers.

165. An assistant Official Receiver, appointed by the Board of Trade, shall be an officer of the Court, like the Official Receiver to whom he is assistant, and, subject to the directions of the Board of Trade, he may represent the Official Receiver in all proceedings in Court, or in any administrative or other matter. Judicial notice shall be

taken of the appointment of an assistant Official Receiver, and he may be removed in the same manner as is provided in the case of an Official Receiver.

B. (90)
166-169.

"An officer of the Ct. like the O. R."—The O. R. is therefore an "officer of the Ct." See *New Zealand Loan, &c., Co.*, W. N. (1894), p. 200. But he is appointed, and his duties determined, by the B. of T., and he is therefore an "officer of, or a person attached to," the B. of T., within s. 27 (2).

As to deputy O. R., see R. (90) 162 (2), *supra*.

166. In the absence of the Official Receiver any officer of the Board of Trade duly authorised for the purpose by the Board of Trade, and any clerk of the Official Receiver duly authorised by him in writing, may by leave of the Court act on behalf of the Official Receiver, and take part for him in any public or other examination and in any unopposed application to the Court.

Power of officers of B. of T. and clerks of O. R. in certain cases to act for O. R.

167. Where a company against whom a winding-up order has been made has no available assets, the Official Receiver shall not be required to incur any expense in relation to the winding-up without the express directions of the Board of Trade.

Duties where no assets.

Perhaps this rule modifies the force of "shall summon," Act, s. 6 (1).

168.—(1.) Where a Liquidator is appointed by the Court, the Official Receiver shall account to the Liquidator.

Accounting by official receiver.

"Is appointed."—See (n.) "A Liquidator was first," &c., p. 364.

As to the O. R. giving the Liq. information, see R. (90) 161, *supra*.

(2.) If the Liquidator is dissatisfied with the account or any part thereof, he may report the matter to the Board of Trade, who shall take such action (if any) thereon as it may deem expedient.

Liquidator dissatisfied with account.

"If any."—If the B. of T. gives him no relief he may then (in bankruptcy) go to the Ct.: *Re Smith*, 17 Q. B. D. 4.

(3.) The provisions of these Rules as to Liquidators and their accounts shall not apply to the Official Receiver when he is Liquidator, but he shall account in such manner as the Board of Trade may from time to time direct.

169. Where there is no committee of inspection any functions of the committee of inspection which devolve on the Board of Trade may, subject to the directions of the Board, be exercised by the Official Receiver.

Official receiver to act for Board of Trade where no committee of inspection.

"Where no Committee of Inspection."—Cf. Act, s. 9 (9); R. (90) 92 (5); *ib.* 154 (2).

R. (90)
170-173.

Appeals
from
Board of
Trade and
official
receiver.

170. An appeal in the High Court against a decision of the Board of Trade, or an appeal to the Court from an act or decision of the Official Receiver, shall be brought within 21 days from the time when the decision or act appealed against is done, pronounced, or made.

"**The B. of T.**"—As to hearing of, R. (Ap. 92) 3 (b), p. 310; R. (90) 5. As to appeals in respect of money paid into bank, Act, s. 15 (5). Against withholding release, Act, s. 22 (1), p. 291. See also s. 25.

"**Of the O. R.**"—As to appeals against O. R. with regard to allowance for making statement of affairs, s. 7 (4); as to admission, &c., of proofs, 1 Sched. 11; R. (90) 111; *ib.* 115. The Act does not give a general power of appeal against acts, &c., of B. of T. and O. R.; as it does in the case of a Liq., see s. 24.

The appeal under this rule is in H. C. by motion, for this rule does not apply to O. R. when acting as Liq., R. (Ap. 92) 3 (1) (b), p. 310 (n.). In other Courts to be in open Ct., R. (90) 5 (e), p. 312.

"**Within twenty-one Days.**"—Enlargement of time, R. (90) 176.

Applica-
tions
under
s. 25 (2)
of Act of
1890.
Report.

171.—(1.) An application by the Board of Trade to the Court to examine on oath the Liquidator or any other person pursuant to section 25 of the Companies (Winding-up) Act, 1890, shall be made *ex parte*, and shall be supported by a report to the Court filed with the proceedings, stating the circumstances in which the application is made.

Report
to be
evidence.

(2.) The report may be signed by any person duly authorised to sign documents on behalf of the Board of Trade; and shall for the purposes of such application be *prima facie* evidence of the statements therein contained.

SPECIAL MANAGER.

Accounts.

172. Every Special Manager shall account to the Official Receiver, and such Special Manager's accounts shall be verified by affidavit, and, when approved by the Official Receiver, the totals of the receipts and payments shall be added to the Official Receiver's accounts.

"**Special Manager.**"—As to power of O. R. to appoint, Act, s. 5 (1). Application for, R. (90) 42.

Form of affidavit verifying, p. 526.

"**Security.**"—Act, s. 5 (2); R. (90) 67.

ATTENDANCE AND APPEARANCE OF PARTIES, ETC.

Attend-
ance at
proceed-
ings.

173. Every person for the time being on the list of contributories of the company and every person whose proof has been admitted shall be at liberty, at his own expense, to attend proceedings, and shall be entitled, upon payment of the costs occasioned thereby, to have notice of all

such proceedings as he shall by written request desire to have notice of; but if the Court shall be of opinion that the attendance of any such person upon any proceedings has occasioned any additional costs which ought not to be borne by the funds of the company, he may direct such costs, or a gross sum in lieu thereof, to be paid by such person; and such person shall not be entitled to attend any further proceedings until he has paid the same.

R. (90)
174-178.

174. Where the attendance of the Liquidator's solicitor is required on any proceeding in Court or Chambers, the Liquidator need not attend in person, except in cases where his presence is necessary in addition to that of his solicitor, or the Court directs him to attend.

Solicitor
of liqui-
dator.

MISCELLANEOUS MATTERS.

175. The Board of Trade may from time to time issue general orders or regulations for the purpose of regulating any matters under the Act or these rules which are of an administrative and not of a judicial character. Judicial notice shall be taken of any general orders or regulations which are printed by the Queen's printers, and purport to be issued under the authority of the Board of Trade.

Board of
Trade
orders, &c.

176. The Court may, in any case in which it shall see fit, extend or abridge the time appointed by these rules or fixed by any order of the Court for doing any act or taking any proceeding.

Enlarge-
ment or
abridg-
ment of
time.

177.—(1.) No proceeding under the Acts shall be invalidated by any formal defect or by any irregularity, unless the Court before which an objection is made to the proceeding is of opinion that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of that Court.

Formal
defect not
to invali-
date pro-
ceedings.

See *Re Bull & Co.*, cited R. (90) 34 (n.); *Re Lang*, cited R. (Ap. 92) 18 (n.), p. 329; *Re Broads Patent Night Light, &c., Co.*, cited R. (Ap. 92) 19, p. 329; *New British Iron, &c., Co.*, 36 Sol. Jo. 610; *Mont de Piété of England*, W. N. (1892) 166, cited *ante*, p. 329.

(2.) No defect or irregularity in the appointment or election of a Receiver, Liquidator, or member of a committee of inspection shall vitiate any act done by him in good faith.

Defect in
appoint-
ment of
receiver,
liquidator,
&c.

178. In all proceedings in or before the Court, or any judge or officer thereof, or over which the Court has jurisdiction under the Acts and rules, where no other provision is made by the Acts or these rules, the practice,

Applica-
tion of
existing
procedure.

R. (90)
179, 180.

proceeding, and regulations shall, unless the Court otherwise in any special case directs, in the High Court and Stannaries Court be in accordance with the rules of the Supreme Court and practice of the High Court, and in a County Court and Palatine Court in accordance, as far as practicable, with the existing rules and practice of the Court in proceedings for the administration of assets by the Court.

"Where no other provision is made."—See R. 180, *infra*, and R. 17 (Ap. 92), *infra*, and (nn.). As to Palatine Court, Lancaster, see Act, s. 26 (5).

"In a County Court, &c., and Palatine Court."—This seems to mean the ordinary Cty. Ct. practice in actions for administration, and not the practice prescribed for petitions (Cty. Ct. R. O. 38), and therefore evidence on the hearing may be given *vivâ voce*, Cty. Ct. R. O. 18, r. 3, for the Cty. Cts. and Palatine Courts are coupled together in the section, and in the latter the only "proceedings for the administration of assets" are those which are conducted in the same manner as proceedings for the administration of assets in the Chancery Division, and the Rules relating to such actions are upon this point similar to those of the H. C.

"Practice of the H. C."—See R. (90) 180 and (n.), and G. O. Nov. (62), r. 74.

In *Re Wakefield, &c., Co.*, 36 Sol. Jo. 524, an originating summons was issued to determine the rights of three classes of shareholders and an *ex parte* motion was made (following the former practice in the C. D.), to appoint three shareholders to represent the three classes. V. Williams, J., made the order asked, but thought the application should have been by summons.

In *Re National Whole Meal, &c., Co.* [1892], 2 Ch. 457, V. Williams, J., gave an appellant from the O. R. the costs of the appeal from his rejection of a proof, following the rule in bankruptcy, but not the costs of proof.

A special case under s. 3 (3) of the Act will, probably, be in the form prescribed by R. S. C., O. 34, and be heard in the same manner.

Petitions
in Liver-
pool and
Man-
chester
district
registries.

179. The provisions of rule 2 of the Rules of the Supreme Court, 1887, relating to petitions in the District Registries of Liverpool and Manchester, shall apply to petitions presented in those Registries under the Acts and these rules.

"R. S. C. 1887, r. 2."—Petitions presented in the District Registries of Liverpool and Manchester respectively and requiring answer, shall be answered in the name of one of the District Registrars of the same respective registries; and the rules of the Supreme Court, and in particular Order 62, r. 18, shall, as regards such petitions, be construed as if the District Registrars of Liverpool and Manchester respectively were mentioned in place of the Registrars of the Chancery Division.

See Interpretation of Registrar, R. (Ap. 92) 35, p. 386.

Rules
under
Order

180. The rules contained in the General Order of the Court of Chancery of 1862 and the Forms prescribed by

such Rules, shall from and after the commencement of these Rules cease to have effect or apply in the winding up of any company wound up under the order of the Court where the winding-up order is made after the 31st of December, 1890.

R. (Ap. 92) 17, 34.

of 1862
not to
apply in
com-
pulsory
windings-
up after
December
31, 1890.

"General Order."—This order is printed in the Appendix. See the "Note" at the head of it.

The Rules of Nov. 1890, made under s. 26 of the Act, which end here, are signed by Halsbury, C., and the President of the B. of T., and are dated 29 Nov., 1890. See the table of contents.

"Wound up under the order of the Court."—The G. O. of Nov. 62 does not therefore apply to an order to wind up, Act, s. 31 (2), made after the above date, but it does apply to a winding-up under supervision or voluntary winding-up, see R. 17 [Ap. 92], following.

17.—[Ap. 92.] In all proceedings for the winding up of a company under the supervision of the Court, or the voluntary winding up of a company, to which these rules apply, the rules contained in the General Order of the High Court of Chancery dated the 11th of November, 1862, which relate to such proceedings, shall, so far as applicable, be observed, subject to the following modifications:—

Proceed-
ings in
windings-
up under
supervi-
sion and
voluntary
windings-
up.

"To which these rules apply."—See R. (Ap. 92) 1, p. 305.

Expressions in the said order relating to the Judge shall be deemed to refer to the Judge of the High Court within the meaning of these rules.

Expressions in the said order relating to the Chief Clerk and the Chambers of the Judge shall be deemed to refer to the Registrar and his office.

All orders shall be drawn up and filed in the office of the Registrar in the manner hereinbefore provided with reference to orders made on the compulsory winding up of a company, and Rule 11 of these rules, relating to the filing of affidavits and other documents in the Registrar's office, shall apply to all such proceedings.

"Drawn up."—R. (Ap. 92), 10, p. 313.

"Filed."—See p. 373.

REPEAL.

34.—[Ap. 92.] The rules mentioned in the first column hereunder are annulled and modified to the extent mentioned in the second column:

R. (Ap. 92)
35–37.

Rule.			Extent of annulment or modification.
Companies 1890:—	Winding - up	Rules,	
Rule 2	. . . . .		Definitions of “Court” and “Judge” so far as relate to the High Court.
Rule 4	. . . . .		The whole.
Rule 53	. . . . .		The whole.
Rule 72	. . . . .		The whole.
Rule 119	. . . . .		The whole.
Rule 130A, paragraph (a)	. . . . .		As to any winding-up in the High Court to which these rules apply.
Rule 145	. . . . .		The whole.
Rule 146	. . . . .		The whole.
The Companies Winding-up Rules, February, 1891	. . . . .		The whole of the rules.

INTERPRETATION.

Interpre-
tation.

35.—[Ap. 92.] (1.) In the application of the Companies Winding-up Rules, 1890 and 1891, and these rules to any winding-up matter to which these rules apply:—

“To which these rules apply.”—See R. (Ap. 92) 1, p. 305.

Expressions relating to the Chief Clerks and Registrars of the Chancery Division of the High Court shall, except in Rule 133, be deemed to refer and be construed as referring to the Registrar.

“Judge” shall in the High Court mean the Judge who for the time being exercises the jurisdiction of the High Court to wind up companies.

“Registrar” shall in the High Court mean and include any of the Registrars in Bankruptcy of the High Court, and any person who shall be appointed to fill the office of Registrar under these rules, and where a winding-up matter is in the District Registry of Liverpool or Manchester, shall mean the District Registrar.

(2.) In these rules the expression “the rules” means all the rules for the time being in force in relation to winding-up matters (including these rules).

FORMS.

Forms.
Com-
mence-
ment,

36.—[Ap. 92.] *This rule is printed, p. 308.*

37.—[Ap. 92.] These rules shall commence and come into operation on the 6th day of May, 1892. They may

be cited as the Companies Winding-up Rules, 1892, and shall be construed with and deemed to form with the Companies Winding-up Rules, 1890, one set of rules. The forms in the Appendix to these rules shall be deemed to form part of the forms of the Companies Winding-up Rules, 1890, and each form may be cited with reference to the forms of the Companies Winding-up Rules, 1890, by the number placed at the head of the form in square brackets.

R. (Ap. 92)
37. _____

short
title, and
citation.

ORDERS, &c.

COMPANIES (WINDING-UP) ACT, 1890.

ORDERS AS TO FEES.

I, the Right Honourable Hardinge Stanley, Baron Halsbury, Lord High Chancellor of Great Britain, Do, by virtue of the powers vested in me by the Companies (Winding-up) Act, 1890, direct that the fees in the scale hereto annexed shall, from and after the date of this Order, be the fees to be paid in respect of proceedings under the said Act, in lieu of the fees in the scale annexed to the Order of December 18, 1890.

(Signed) HALSBURY, C.

Dated the 17th day of December, 1891.

See Act, s. 26, sub-s. 4.

SCALE OF FEES.

TABLE A.

	£	s.	d.
Every petition	2	0	0
Every bond with sureties	0	10	0
Every subpoena or summons	0	3	0
Every order made in Court (except a winding-up order)	1	0	0
Every order made in Chambers	0	5	0
Every affidavit filed other than proof of debts	0	2	0
For taking an affidavit or an affirmation, or attestation, upon honour in lieu of an affidavit or a declaration, except for proof of debts, and except declaration by a shorthand writer under Rule 16 (Form 6) for each person making the same	0	1	6
And in addition thereto for each exhibit referred to therein and required to be marked	0	1	0
On every proof of debt above £2 (other than proof for workmen's wages under Rule 106)	0	1	0
Every application for search other than by petitioner, liquidator, or officer of the company	0	1	0
Every office copy, each folio of 72 words	0	0	4
Every application to inspect liquidator's statement lodged with Registrar of Joint Stock Companies under Section 15 of the Act	0	2	6
Every copy of or extract from such statement, each folio of 72 words or figures	0	0	4
Every application by a committee of inspection to the Board of Trade for a special bank account	1	0	0

	£	s.	d.
Every order of the Board of Trade for a special bank account	2	0	0
Every application by a liquidator to an Official Receiver acting as committee of inspection	0	10	0
	0	10	0

R. (90) 169.

Every application under Section 15 of the Act to the Board of Trade for payment of money out of the Companies Liquidation Account; and every application for the re-issue of a lapsed cheque or money order in respect of moneys standing to the credit of the Companies Liquidation Account:—

Where the amount applied for does not exceed £1	0	1	0
Where the amount applied for exceeds £1	0	2	6

On one copy of the cash book showing assets realised, forwarded by the Official Receiver or liquidator to the Board of Trade, a fee according to the following scale on the gross amount of the assets realized and brought to credit, viz:—

On the first £5,000 or fraction thereof	1 per cent.
On the next £95,000 " " " " "	$\frac{1}{2}$ "
On the next £400,000 " " " " "	$\frac{1}{4}$ "
On the next £500,000 " " " " "	$\frac{1}{8}$ "
Above £1,000,000	$\frac{1}{16}$ "

For taxation of costs.—The same fees as those directed to be paid and collected by the order for the time being as to Supreme Court fees.

TABLE B.

I.—Where the Official Receiver acts as provisional liquidator only.

(a.) If the petition is withdrawn or dismissed:—

Such amount as the Court may consider reasonable to be paid by the petitioner (in addition to the fee payable on the petition) in respect of the services of the Official Receiver as provisional liquidator.

(b.) Where a winding-up order is made but the Official Receiver is not continued as liquidator:—

(1.) In respect of every 10 members, creditors and debtors, and every fraction of 10 0 10 0

Provided that where the net assets of the company are estimated not to exceed £500, three-fifths of the above fee only shall be charged.

(This fee to include cost of official stationery, printing, books, forms, and postages.)

(2.) On the value of the company's property as estimated in the statement of affairs:—

On the first £5,000 or fraction thereof	1 per cent.
On the next £20,000 " " " " "	$\frac{1}{2}$ "
On the next £75,000 " " " " "	$\frac{1}{4}$ "
Above £100,000	$\frac{1}{8}$ "

II.—Where the Official Receiver is continued as liquidator of the company (including his services as provisional liquidator).

(1.) In respect of every 10 members, creditors and debtors, and every fraction of 10 1 0 0

Provided that where the net assets of the company

£ s. d.

are estimated not to exceed £500, three-fifths of the above fee only shall be charged.

(This fee to include cost of official stationery, printing, books, forms, and postages.)

- (2.) Upon the total assets, including produce of calls on contributories, realized or brought to credit, after deducting sums paid to secured creditors (other than debenture-holders), and not being moneys received and spent in carrying on the business of the company :—

On the first £1,000 or fraction thereof	.	.	5 per cent.
On the next £1,500	„	„	4 „
On the next £2,500	„	„	3 „
On the next £5,000	„	„	2 „
On the next £90,000	„	„	1 „
On the next £400,000	„	„	$\frac{1}{2}$ „
On the next £500,000	„	„	$\frac{1}{4}$ „
Above £1,000,000	.	.	$\frac{1}{8}$ „

- (3.) On the amount distributed in dividend or paid to contributories, &c. . . . Half the above percentages.

III.—Where the Official Receiver is continued as liquidator of the company for the purpose of carrying out a reconstruction or other scheme by which the affairs of the company are wound up otherwise than by the realization and distribution of the assets :—

- (1.) For every 10 members, creditors, and debtors, and on any assets realized or distributed, the same fees as are chargeable under No. II. of this Table.
 (2.) On the estimated value of the company's property (after deducting any amount realized), the same fees as are chargeable under No. I. of this Table.

These fees to include the services of the Official Receiver as provisional liquidator.

IV.—Travelling, keeping possession, legal and other reasonable expenses of the Official Receiver, the amount disbursed.

V.—On every payment under Section 15 of money out of the Companies Liquidation Account, threepence on each pound or fraction of a pound to be charged as follows :—

Where the money consists of unclaimed dividends, on each dividend paid out.

Where the money consists of undistributed funds or balances, on the amount paid out.

TABLE C.

High bailiff for attending sittings of the Court, under each winding-up order, per case	0	6	0
Serving every petition or subpoena or winding-up or other order (not serviceable by post) within two miles, including affidavit of service	0	3	6
If serviceable by post	0	1	0
Executing every warrant of seizure, or search warrant, or warrant of apprehension, or order of commitment within two miles of Court	0	10	0

	£	s.	d.
Keeping possession under a warrant, for each day the man is actually in possession; including affidavit of possession being actually kept	0	4	6
(Not less than 3s. 6d. of the above sum is to be paid to the man in possession, and his receipt produced.)			
High bailiff's or (in the London district) officer's man, travelling to place of possession, or to execute a warrant of or order of commitment, or to serve a summons or subpœna, or for any other purpose specially directed by the Court, per mile	0	0	5
His time, per day, where distance exceeds 10 miles	0	4	6
His expenses, per day	0	4	6
If high bailiff of a County Court or officer of Supreme Court directed by the Court personally to travel, per mile	0	0	7
His time, per day	0	10	0
His expenses, per day	0	10	0

We, the undersigned Lords Commissioners of Her Majesty's Treasury, do hereby sanction the foregoing scales of fees, and do direct that the fees mentioned in Table A. shall be taken in money, except when they are to be taken by an officer of the Supreme Court of Judicature, or an officer of the Board of Trade, or an officer in the Companies Registration Office, and that the fees mentioned in Tables B and C shall be taken in money.

The documents to be stamped and the description of stamps to be used shall be as provided in the schedule annexed hereto.

The adhesive stamps shall be Judicature Fee Stamps, when the fee is to be taken by any officer of the Supreme Court of Judicature; they shall be stamps over-printed with the words "Companies Winding-up," when the fee is to be taken by the Official Receiver or any other officer of the Board of Trade; and they shall be the stamps used for the purposes of the "Companies Act" when taken by any officer in the Companies Registration Office.

See extract from Order dated 28th July, 1892, *infra*.

They shall be cancelled by the various Court or other officials by perforation, or in such other manner as the Commissioners of Inland Revenue may from time to time direct.

The impressed stamp shall be of such character as the said Commissioners may adopt for the purpose.

And we further direct that wherever practicable the stamp shall be affixed or the money paid in respect of every fee before the proceeding is had in respect of which the fee is payable; and that the charge to be made by the London Gazette for the insertion of each notice authorized by the Act or Rules shall be five shillings.

(Signed) HERBERT EUSTACE MAXWELL,
SIDNEY HERBERT,

Two of the Lords Commissioners of
Her Majesty's Treasury.

Dated the 17th day of December, 1891.

THE SCHEDULE ABOVE REFERRED TO.

Proceeding.	Document to be Stamped.	Character of Stamp to be used.
Every petition	Petition	Impressed.
Every bond with sureties	Bond	Impressed.
Every affidavit filed	Affidavit	Impressed or adhesive.
Every subpoena or summons	Subpœna or summons.	Impressed.
Every order made in Court or Chambers	Order	Impressed.
For taking an affidavit or an affirmation, or attestation upon honour in lieu of an affidavit or a declaration.	Affidavit	Impressed or adhesive.
Every proof of debt above £2	Proof	Impressed or adhesive.
Every application for search	Application	Impressed.
Every application to inspect liquidator's statement.	Application	Impressed.
Every copy or office copy	Office copy	Impressed or adhesive.
Every certificate of taxation by any officer of the Court for any costs, charges, or disbursements.	Certificate	Impressed or adhesive.

COMPANIES (WINDING-UP) ACT, 1890.

ORDER AS TO FEES.

I, the Right Honourable Hardinge Stanley, Baron Halsbury, Lord High Chancellor of Great Britain, do, by virtue of the powers vested in me by the Companies (Winding-up) Act, 1890, direct that in cases where the head office of the company being wound up is situated out of England, and the liquidation takes place partly in England and partly elsewhere, such reduction may be made in the fees prescribed in the scale of fees annexed to the order of 17th December, 1891, as may, on the application of the Official Receiver, be sanctioned by the Court.

Dated the 24th day of June, 1892.

(Signed) HALSBURY, C.

See *The Federal Bank of Australia*, 68 L. T. 728.

COMPANIES (WINDING-UP) ACT, 1890.

ORDER AS TO FEES.

I, the Right Honourable Farrer, Baron Herschell, Lord High Chancellor of Great Britain, do, by virtue of the powers vested in me by the Companies (Winding-up) Act, 1890, direct that, notwithstanding anything in the Order as to Fees of the 17th December, 1891, in cases where the Official Receiver is continued as Liquidator of a company for the purpose of carrying out a reconstruction or other scheme, by which the affairs of

the company are wound up otherwise than by the realization and distribution of the assets, or where, during the period that the Official Receiver is acting as Provisional Liquidator, the proceedings under the Winding-up Order are stayed on the ground that a reconstruction or scheme of arrangement has been sanctioned by the Court, such reduction may be made in the fees prescribed in the Scale of Fees annexed to the Order of 17th December, 1891, as may, on the application of the Official Receiver, and with the concurrence of the Board of Trade, be sanctioned by the Court.

Dated the 24th day of August, 1893.

(Signed) **HERSCHELL, C.**

COMPANIES (WINDING-UP) ACT, 1890.

ORDER OF THE LORD CHANCELLOR UNDER SECTION ONE, SUB-SECTION (5), OF THE COMPANIES (WINDING-UP) ACT, 1890.

I, the Right Honourable Hardinge Stanley, Baron Halsbury, Lord High Chancellor of Great Britain, do hereby, by virtue of the power vested in me by section one of the Companies (Winding-up) Act, 1890, and all other powers enabling me in that behalf, order that a County Court which at the time of the coming into operation of the Companies (Winding-up) Act, 1890, is excluded from having jurisdiction in bankruptcy shall be excluded from having jurisdiction under the Companies (Winding-up) Act, 1890, until further order, and the district of any such County Court shall for the purposes of jurisdiction under the Companies (Winding-up) Act, 1890, be attached until further order to the Court to which that district is attached at the time of the coming into operation of this Act for the purposes of jurisdiction in bankruptcy.

The 29th day of November, 1890.

(Signed) **HALSBURY, C.**

HIGH COURT OF JUSTICE.

COMPANIES (WINDING-UP).

NOTICE AS TO TRANSFER.

No application for the transfer of the winding up of a company or any proceedings therein from a County Court to the High Court will be entertained until the list of parties who have given notice of their intention to attend the hearing of the petition has been closed.

The party applying for such transfer must give 4 days' notice by postal letter of the application for that purpose to the petitioner, respondent, and to all parties in the list above mentioned.

Such letter must state that unless notice is given to the applicant by any of the above-mentioned parties of intention to oppose, the application for such transfer will be taken as not objected to by the parties.

No costs will be allowed to any parties appearing to support or oppose a transfer as above mentioned unless for special reasons the Judge shall otherwise determine.

NOTICE.
IN THE HIGH COURT OF JUSTICE.
COMPANIES (WINDING-UP).
MOTIONS.

A copy of the notice of every motion before the Judge must be left in the office of the Registrar not later than 2 days before the day named for hearing the motion.

A list of the motions will be prepared, and they will be taken in the order in which they appear in such list.

AFFIDAVITS IN DEBENTURE ACTIONS.

All affidavits in actions by debenture-holders which have been or shall be transferred to Mr. Justice Vaughan Williams are to be filed in this office (Room 66, Bankruptcy Buildings). Judicature fee stamps are used for these affidavits (Oct. 1892).

NOTICE AS TO STITCHING MARGINS.

All summonses, affidavits, and other documents to be filed in this office must have a stitching margin of at least one inch, and no document will be accepted for filing without such stitching margin unless by the leave of the Registrar.

15th February, 1893.

BY ORDER.

DEBENTURE-HOLDER'S ACTIONS.

Every writ of summons in debenture-holder's actions shall be intitled "In the matter of the — Company" and in cases where the company is in process of being wound up the action is to be specially assigned to the judge having jurisdiction in the matter of the winding-up (29 November, 1895).

This Practice Masters' Rule only applies to actions by debenture-holders to enforce their security. *Lock v. Queensland Investment Co., Times*, 15th January, 1896.

REGULATIONS OF BOARD OF TRADE UNDER
R. (90) 176, AS TO LIQUIDATORS' ACCOUNTS,
AND PAYMENTS BY AND TO LIQUIDATORS.
(JANUARY, 1893.)

Remittances to Companies Liquidation Account.

1. All moneys received by a liquidator of a company which is being wound up by order of the Court are required to be paid, without deduction, to the companies liquidation account (unless an account with any other bank has been authorized by the Board of Trade under

section 11 of the Companies (Winding-up) Act, 1890), and remittances are to be made once a week, or forthwith, if a sum of £200 has been received. Remittances may be made direct to the Bank of England, Law Courts Branch, London, by cheque crossed "Bank of England, credit of companies liquidation account."

2. The remittances to the Bank of England should be accompanied by a receivable order (Form C, No. 7), and the counterpart or advice letter should be transmitted by the same post to the Assistant Secretary, Finance Department, Board of Trade. Halfpence should not be included in remittances. Forms of receivable order will be supplied on application to the inspector-general in companies liquidation.

3. By sub-section 6 of section 11 of the Companies (Winding-up) Act, 1890, a liquidator is absolutely prohibited from paying any sums received by him as liquidator into his private banking account, and by sub-section 4 it is enacted that if a liquidator at any time retains for more than ten days a sum exceeding £50, or such other amount as the Board of Trade in any particular case authorize him to retain, then, unless he explains the retention to the satisfaction of the Board of Trade, he shall pay interest on the amount so retained in excess at the rate of £20 per cent. per annum, and shall be liable to disallowance of all or such part of his remuneration as to the Board shall seem just, and to be removed from his office by the Board, and shall be liable to pay any expenses occasioned by reason of his default.

All current bills of exchange should be remitted to the companies liquidation account.

Special Bank Account.

4. Where a special bank account is sanctioned by the Board of Trade under the provisions of section 11 (3) of the Companies (Winding-up) Act, 1890, all moneys received must be paid into the appointed bank. The pass-book with the special bank should be forwarded at each audit.

Payments made to a Liquidator out of Companies Liquidation Account.

5. All necessary disbursements made by a liquidator on account of a company to the date of his application for release will be repaid to him out of any moneys standing to the credit of the company in the companies liquidation account on application to the inspector-general (Form C, No. 5).

Any expenses properly incurred by the liquidator after applying for, but before obtaining his release, will be repaid to him by the official receiver out of any funds available for the purpose.

6. Cheques to the order of the payee for sums which become payable on account of the company may be obtained by the trustee (*sic*) on application by him on Form C, No. 6, for delivery by him to the parties entitled.

7. Under no circumstances will the Board of Trade hold themselves responsible for payments made on the requisition of the liquidator.

8. The inspector-general will be prepared to certify the balance standing to the credit of a company in the companies liquidation account, on receiving from the liquidator a statement of the balance shown by the bank columns of the cash book.

9. Moneys withdrawn from the bank should not be treated as receipts from realizations, but should appear only in the "drawn from bank" column of the cash book, the application of the money being entered in the "payments" column. The payments into the bank should appear only in the "paid into bank" column in the cash book.

Cancellation of Cheques and Money Orders.

10. All applications for the cancellation of cheques and money orders should be addressed to the inspector-general and should state the grounds upon which the cancellation is required.

Payment of Dividends.

11. The payment of dividends will in every instance, *except where a special bank account has been authorized*, be made by cheques on the Bank of England, or money orders, which will be prepared by the Board of Trade on the application of the liquidator (Form C, No. 40), and will be transmitted to him for distribution amongst the creditors. The Board of Trade will require *ten days'* notice to enable them to prepare the cheques or money orders for dividends. As imperfect or inaccurate lists would cause considerable inconvenience and increased labour, great care should be exercised in the preparation of them, and in all cases of payment to executors, trustees, representative officials, &c., the name or names should be inserted in the list.

The several payees in the lists should be numbered consecutively, so that for the purpose of identification corresponding numbers may be affixed to the cheques and money orders.

The total amount of the dividend payable should be charged in the cash book in one sum. If the dividend has been paid by cheques on the companies liquidation account, the liquidator on the expiration of six months from the date of issue, or on application for his release, if that event occurs earlier, should return any cheques or postal orders remaining in hand to the Assistant Secretary, Finance Department, Board of Trade.

If the dividend has been paid through a special bank, the liquidator will be required, at the expiry of six months from the date of the declaration of a dividend, to forward to the inspector-general for audit, vouchers for the dividends paid and a list of those remaining unclaimed. The liquidator will then be furnished with a receivable order for payment into the Bank of England of the amount of the dividends unclaimed.

Under no circumstances should unclaimed dividends be credited to the estate without the previous sanction of the inspector-general.

REGULATIONS APPROVED BY THE BOARD OF
TRADE AND THE COMMISSIONERS OF INLAND
REVENUE AS TO QUEEN'S TAXES ASSESSED
ON COMPANIES WOUND UP BY THE COURT.

1. Where a winding-up order is made on or after the 1st December in the year of assessment, or the official receiver or liquidator remains in possession of the premises in respect of which Queen's taxes are assessed under a winding up-order made prior to the 1st December until the 1st January next following, the collector shall be entitled to prove for the said taxes, viz. the income tax (Schedule A), inhabited house duty, and land tax assessed on the company up to the 5th April next following the date of the winding-up order, and such proof shall rank for dividend.

2. Where a winding-up order is made prior to the 1st December in the year of assessment, the Inland Revenue authorities will make no claim on the official receiver or liquidator for income tax (Schedule A), inhabited house duty, and land tax for the year ending 5th April next

following the date of the winding-up order, unless the official receiver or liquidator remains in possession of the premises in respect of which the taxes are assessed until the following 1st January.

3. Where the official receiver or liquidator disposes of a business as a going concern, he will allow to the purchaser the proportion of the income tax (Schedule A) and land tax for the current year to the date of the completion of the purchase, and the purchaser shall become liable to the Inland Revenue authorities for the tax in question for the whole year.

4. Provided always that nothing in these regulations shall be deemed to interfere with the right of the Crown to enforce payment of income tax (Schedule A) and land tax actually due and payable by distress levied on the property of the company. These taxes for the year ending 5th April next following the date of the winding-up order should therefore be dealt with on the footing of "secured" debts, and be paid by the official receiver or liquidator on demand without any proof on the part of the collector if on or after the 1st January in the year of assessment there are on the premises sufficient goods belonging to the company on which the collector might levy, and notice of any such claim should be given to the official receiver or liquidator by the collector forthwith upon the making of the winding-up order. If at such time there are no goods upon which distress can be levied, proof of the debt may be made by the collector as directed in paragraph 1, and such proof shall, if found correct, be admitted and rank for dividend.

In like manner any income tax (Schedule A) and land tax assessed on the company up to the 5th April next before the date of the winding-up order should be dealt with as secured debts if there are at the time of the collector's demand sufficient goods on the premises on which he might levy. If there are no such goods, proof of the debt may be made by the collector, and such proof shall, if found correct, be admitted as a preferential claim in so far as it relates to taxes payable in full under s. 1 (1a) of the Preferential Payments in Bankruptcy Act, 1888, and as ranking for dividend for any part thereof not so payable in full.

5. Where income tax is outstanding under Schedules B, D, or E, the Inland Revenue authorities will, on receipt of an affidavit by the secretary or other officer of the company, with a certificate by the official receiver or liquidator, setting out that no income taxable under such schedule has been made, forego all claim to payment of the tax, whether the same is payable in full under s. 1 (1a) of the Preferential Payments in Bankruptcy Act, 1888, or otherwise, but the waiver of claim under this regulation shall not embrace rents, royalties, interest of money, or annuities or fees, or salaries from which deductions have been made on account of income tax.

6. In cases where an affidavit by the secretary or other officer of the company cannot be obtained, the certificate of the official receiver or liquidator may be accepted as sufficient evidence.

The following form is appended to the above regulations:—

FORM.

The Preferential Payments in Bankruptcy Act, 1888, and the Companies Acts, 1862 to 1890.

In the matter of _____, Limited.
I, _____, of _____, of the above-named company, do hereby make oath and say as follows:—

1. That *(the words in brackets to be left out in claims under Schedule B or E)* [by virtue of an Act of Parliament, 5 & 6 Vict. c. 35, s. 134]

the said company is justly and truly entitled to be relieved of the payment of the sum of £ , being the amount of income tax charged to the said company under Schedule , from the 6th April, 189 , to the 5th April, 189 , the ground of exemption being that no income taxable under the said schedule has been made by the said company (*the words "by the said company" to be left out in cases of Schedule E, assessment of fees, salaries, &c., paid to directors, &c.*) during the aforesaid period.

Sworn at , in the county of , }
 this day of , 189 . }
 Before me . }

PART III.

VOLUNTARY WINDING - UP AND WINDING - UP
UNDER THE SUPERVISION OF THE COURT.

CHAPTER I.

VOLUNTARY WINDING-UP.

What companies may be wound up voluntarily.	removal of liquidator.
When and how companies may be wound up voluntarily.	Powers and duties of liquidator.
Commencement of winding-up.	General powers.
Consequences of voluntary winding-up.	Several liquidators.
Appointment, remuneration, and re-	Applications to the Court, s. 138.
	Winding-up order after voluntary liquidation.
	Dissolution.

VOLUNTARY windings-up are conducted under the provisions of the Act and general orders of 1862. They are not affected by the Act and rules of 1890 except to the extent in the Act mentioned. The principal sections affecting voluntary winding-up are ss. 10 and 14.

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What companies may be wound up voluntarily.—Any company registered under the Act of 1862, or under the former Joint Stock Companies Acts, although not re-registered under the present Act (*a*), can be wound up voluntarily (*b*), but **no unregistered company** can be wound up either voluntarily or under supervision (*c*).

As to industrial and provident societies and building societies, see *ante*, Part I., Chap. II., pp. 11, 13.

When and how companies may be wound up voluntarily.—A company may be wound up voluntarily under the following circumstances:—

(1.) Whenever the period, if any, fixed by the articles expires, or the event, if any, upon which the company is to be dissolved, occurs, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily (*d*).

(2.) Whenever the company has passed a **special resolution**—that is to say, a resolution passed by *three-fourths*

(*a*) *Torquay Bath Co.*, 32 Beav. 581; *London India Rubber Co.*, 1 Ch. 329 (continued under supervision); *Beaujolais Wine Co.*, 3

Ch. 15.

(*b*) See ss. 175, 176, 180, 199.(*c*) S. 199 (2).(*d*) S. 129 (1).

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of the members present at a meeting, and confirmed by a subsequent resolution passed by a *majority* at a meeting held at an interval of not less than fourteen days nor more than one month from the date of the first meeting (*a*)—requiring the company to be wound up voluntarily (*b*). The interval of fourteen days means fourteen clear days, exclusive of the respective days of meeting (*c*). But if the interval is less than fourteen clear days, the statutory defect in the resolution only affects the position of the company and its shareholders *inter se*, and does not concern the creditors (*d*). It is only necessary to send the notices of the general meeting to shareholders within the jurisdiction (*e*). Care should be taken to give a proper notice of the second meeting to confirm the resolutions; both meetings cannot be called by the one notice (*f*).

(3.) Whenever the company has passed an **extraordinary** resolution—that is to say, a resolution passed by *three-fourths* of the members present at a meeting, and not requiring confirmation—that it has been proved to their satisfaction that the company cannot, by reason of its liabilities, continue its business, and that it is advisable to wind up the same (*g*).

This will be the quickest mode when the company is in difficulties and insolvent. The notice of the meeting should refer clearly to the intention to pass a final resolution, and also state that the company cannot by reason of its liabilities continue its business; but the words of sub-s. 3 of s. 129 will be sufficient for that purpose (*h*).

(*a*) See the full provisions of ss. 51, 52, 53. As to the necessity of the resolution being confirmed at a subsequent meeting, see *Hornby's Case*, 16 W. R. 1164. As to what is a valid demand of a poll, see *Phoenix Electric Light Co.*, 48 L. T. 260. As to voting by show of hands and poll, see *Bidwell Bros.* [1893], 1 Ch. 603; *Horbury Bridge Coal Co.*, 11 Ch. D. 109; *Caloric Engine, &c., Co.*, 52 L. T. 846; not followed in *Bidwell Bros.*, *supra*. As to the authority of the chairman of a general meeting, see *Re Indian Zoedone Co.*, 26 Ch. D. 70; *Sykes v. National Dwellings Co.* [1894], 3 Ch. 159.

(*b*) S. 129 (2).

(*c*) *Railway Sleepers Supply Co.*,

29 Ch. D. 204.

(*d*) *Miller's Dale, &c., Lime Co.*, 31 Ch. D. 211.

(*e*) *Union Hill Silver Co.*, 22 L. T. 400. See s. 52, as to seven days' notice in the absence of any special regulations. As to irregularity in summoning a meeting on notices, see *Browne v. La Trinidad*, 37 Ch. D. 1.

(*f*) *Alexander v. Simpson*, 43 Ch. D. 139.

(*g*) See the full provisions of s. 129 (3).

(*h*) *Stone v. City and County Bank*, 3 C. P. D. 282. In *Bridport Old Brewery Co.*, 2 Ch. 191, and *Silkstone Fall Colliery Co.*, 1 Ch. D. 38, the resolution was held invalid.

When it is also intended to appoint a liquidator at the same meeting, this should be specified in the notice (a).

In order that the resolutions may be valid, the regulations of the company as to summoning, and as to the conduct of, the meeting must be observed (b).

If the resolution is good in itself, it is not invalidated by being mixed up with other resolutions which have not been regularly passed, but are *intra vires*; nor, even it seems, by being associated with some which are *ultra vires* (c).

The resolution, whether special or extraordinary, must be advertised in the *Gazette* (d); and the chairman of the meeting must sign the notice for insertion, and his signature must be attested by a witness. There will also be a duplicate, verified by statutory declaration of a director, officer, or shareholder present at the meetings.

When the articles of association provide that a poll shall be taken "in such manner as the chairman shall direct," if, at a meeting to consider a resolution for a voluntary winding-up, a poll be demanded, it may be taken then and there by the direction of the chairman (e). But this cannot be done when the articles are not so worded (f).

Where, by the articles of association, voting by **proxy** is allowed, although no poll is demanded, the chairman, in ascertaining the number of votes given, must count the vote of each person who has given a proxy, not according to the number of shares held by him, but as one vote (g).

The **validity of a winding-up order** cannot be questioned in any proceeding taken in the winding-up, but this is not the case as regards a resolution to wind up voluntarily (h).

As to **restraining a company from holding meetings** to pass resolutions, see case below (i). A very strong case

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(a) *Stearic Acid Co.*, 32 L. J. Ch. 784. See *infra*, p. 406, as to notice.

(b) *Cambrian Peat, &c., Co., Ex p. Mott & Turner*, 31 L. T. 773.

(c) *Ex p. Fox*, 6 Ch. 176; *Cleve v. Financial Corp.*, 16 Eq. 363; *Clinch v. Financial Corp.*, 4 Ch. 117.

(d) S. 132. See form, p. 577.

(e) *Chillington Iron Co.*, 29 Ch. D. 159; *Phoenix Electric Light Co.*, *supra*.

(f) *British Flax Producers Co.*, 60 L. T. 215. As to ruling of chairman on an amendment, *Henderson v. Bank of Australasia*, 63 L. T. 597.

(g) *Bidwell Bros.* [1893], 1 Ch. 603, not following *Re Caloric Engine, &c., Co.*, 52 L. T. 846.

(h) *Bridport Old Brewery Co.*, *supra*.

(i) *British Water Gas Syndicate v. Notts, &c., Co.*, W. N. 1889, p. 204, 6 T. L. R. 44.

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must be made out to shew that the power to wind up voluntarily should not be exercised (a).

Notice of a special resolution to wind up must be sent to the **Registrar** of Joint Stock Companies (b).

Commencement of winding-up.—The voluntary winding-up is deemed to commence at the time of the passing of the resolution to wind up (c), and, in the case of a special resolution, from the confirmatory resolution (d).

See hereon *ante*, Part I., Chap. VI., p. 77.

Where, upon a petition to wind up, a provisional liquidator is appointed, and a resolution subsequently passed for a voluntary winding-up, the authorities conflict as to what is the commencement; the true view, it is submitted, is that it commences at the date of the resolution (e).

Consequences of voluntary winding-up (f).—From the date of the passing of the resolution the company must **cease to carry on business**, except for the purpose of winding up its affairs (g), and it cannot, therefore, amalgamate after that time with another company, notwithstanding provisions in the articles of association (h).

No shares can be transferred, except to or with the sanction of the liquidators (i), and the status of the members of the company is to be in no way altered (k). Liquidators have sanctioned transfers of shares on the terms of the transferor executing deeds-poll to guarantee payment by their transferees of all calls (l).

But members of a company may transfer their shares at any time before the resolution has been passed, notwithstanding they know that such a resolution is about to be

(a) *Ellis v. Dadson & Co.*, W. N. 1891, p. 43.

(b) See s. 53.

(c) S. 130.

(d) *Dawes's Case*, 6 Eq. 232; *Weston's Case*, 4 Ch. 20; *Hornby's Case*, 16 W. R. 1164. See *Dry Docks Corp. of London*, 39 Ch. D. 306. See *Imperial Land Co. of Marseilles, Ex p. Colborne*, 11 Eq. 478.

(e) *West Cumberland Iron, &c., Co.*, 40 Ch. D. 361; *Emperor Life Ass. Soc., Ex p. Holliday*, 31 Ch. D. 78; *Colonial Trusts Corp., Ex*

p. Bradshaw, 15 Ch. D. 465.

(f) See also *ante*, Part I., Chaps. V. and VI.

(g) S. 131.

(h) *London, Bombay, and Mediterranean Bank*, 36 L. J. Ch. 785.

(i) See *Imperial Land Co. of Marseilles, Vining's Case*, 6 Ch. 96 and 103, as to the meaning of the above words.

(k) S. 131.

(l) *Cleve v. Financial Corp.*, 16 Eq. 363.

passed (a). And a transfer registered after the preliminary but before the confirmatory resolution is good (b).

If a stockbroker sells shares for the defendant after the resolution to wind up, the defendant cannot refuse to execute a transfer though it might be nugatory (c).

A member cannot repudiate his shares on the ground of fraud after the resolution to wind up (d).

Liquidators have no power to cancel a valid forfeiture of shares made before the resolution (e).

Upon the appointment of liquidators, all the powers of the directors cease, except in so far as the company in general meeting, or the liquidators may sanction the continuance of such powers (f). But with the sanction of the liquidators or of a general meeting (which can be called at any time by the liquidators) directors can exercise their powers; thus, they can enforce payment of calls by sale or forfeiture of shares after winding up with such sanction (g). The directors do not cease to be officers of the company on the commencement of the winding-up, and they are bound to answer interrogatories in an action brought by the liquidator in the name of the company for arrears of calls (h).

The company, however, exists with all its corporate powers until the winding-up has been finally completed (i).

A mere voluntary resolution to wind up will not stop interest from running; but in a voluntary winding-up, followed by a supervision order, interest stops from the date of the confirmatory resolution (k).

The voluntary liquidation of a company does not incapacitate it from performing a contract, as the liquidators have power under ss. 95 and 131 to continue the contract (l). As a general rule, it is equivalent to dismissal

(a) *Taurine Co.*, 25 Ch. D. 118.
See *ante*, Part I., Chap. VIII., p. 137.

(b) *Hornby's Case*, 16 W. R. 1164.

(c) *Biederman v. Stone*, L. R. 2 C. P. 504.

(d) See the cases, *ante*, p. 141, and *Stone v. City and County Bank*, 3 C. P. D. 282; *Tennent v. City of Glasgow Bank*, 4 App. Cas. 615. See the principle in *Oakes v. Turquand*, L. R. 2 H. L. 325.

(e) *Dawes's Case*, 6 Eq. 232. See *ante*, Part I., Chap. VIII., p. 135.

(f) S. 133 (5).

(g) *Fairbairn Engineering Co., Ladd's Case* [1893], 3 Ch. 450.

(h) *Madrid Bank v. Bayley*, L. R. 2 Q. B. 37. See *Diamond Fuel Co.*, 13 Ch. D. 400, as to power of directors to appeal.

(i) S. 131.

(k) *Imperial Land Co. of Marseilles, Ex p. Colborne & Strawbridge*, 11 Eq. 478. See *ante*, Part I., Chap. VII., p. 97, as to the effect of a compulsory order on interest running.

(l) *British Waggon Co. v. Lea & Co.*, 5 Q. B. D. 149.

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of the servants of the company (*a*). If, however, a resolution to wind up voluntarily disables a company from performing its contracts, it may be answerable in damages for a breach of them (*b*); but, generally speaking, a winding-up order is not equivalent to a breach of contract (*c*).

It has been held that s. 131 does not amount to a prohibition of contracts not necessary for the beneficial winding up of the company, though they may not be binding as between shareholders and liquidator (*d*); and even assuming it does amount to such a prohibition, the *onus* of proof would be on the defendant to shew that the contract was not requisite for the beneficial winding-up, not on the company to shew that it is beneficial (*e*).

Appointment, remuneration, and removal of liquidator.—The liquidator or liquidators must be appointed by the company in general meeting (*f*), unless the company delegate this power by an extraordinary resolution to its creditors, or to a committee of them (*g*). In the case of an **extraordinary resolution**, liquidators **may be appointed at the one meeting held** (*h*). In the case of a special resolution, the appointment of liquidators, made at the first meeting, and confirmed at the second, is good (*i*); and this is the usual mode of appointment. If this plan is not adopted, and liquidators are not proposed when the resolution is passed at the first meeting, the appointment is generally made at the second meeting after the special resolution has been confirmed. Notice of the proposed appointment is usually given, and, as a rule, also the name of the person is stated, and, sometimes, the fixing of the remuneration is referred to. If it is intended to give one of the liquidators special powers, *e.g.* a general power of compromise (*k*), this should be stated in the resolution. It seems that the liquidators may be lawfully appointed, though no notice of

(*a*) *Shirreff's Case*, 14 Eq. 417. See *Stirling v. Maitland*, 5 B. & S. 840; *Ex p. Maclure*, 5 Ch. 737; *Patent Floor Cloth Co.*, 26 L. T. 467, as to claims by officers and servants in a voluntary winding-up. See *ante*, Part I., Chap. VII., p. 93, as to claims by servants and others.

(*b*) *Inchbald v. Western Neilgherry Coffee Co.*, 17 C. B. N. S. 733; 5 N. R. 52.

(*c*) *Lindley*, 1469 (4th ed.).

(*d*) *Bateman & Co. v. Ball*, 56 L. J. Q. B. 291.

(*e*) *Hire Purchase Furnishing Co. v. Richens*, 20 Q. B. D. 387.

(*f*) S. 133.

(*g*) See ss. 135, 137.

(*h*) See *ante*, p. 402, as to an extraordinary resolution.

(*i*) *London and Australian Agency Co.*, 22 W. R. 45. See *Petersburg Gas Co.*, 24 W. R. 230.

(*k*) See form, *post*, p. 577.

the resolution to appoint them has been given (a); but it would certainly not be advisable to omit the notice. Chap. I.

A resolution appointing a liquidator is operative only when there is an effective resolution to wind up. Where, therefore, a special resolution to wind up voluntarily which requires confirmation, has been passed at the first meeting, although it is unobjectionable to pass at the same meeting a resolution appointing a liquidator, the latter resolution by itself can have no effect; and if at the subsequent meeting the latter is rejected, it is immaterial that the principal resolution, *i.e.* to wind up, has been confirmed (b). Nor is it possible to fall back upon the resolution appointing a liquidator which was passed at the first meeting, and treat it as binding (b). VOLUN-
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All proceedings taken by liquidators before any invalidity of appointment is discovered are valid; but after the appointment has been clearly shewn to be invalid any proceedings taken by them are abortive (c).

If there is no liquidator the Court may, on the application of a contributory, appoint one (d). The application will be by petition or motion, or, if the judge shall so direct, by summons at chambers (e).

As to the validity of appointment notwithstanding any defect in appointment or qualification, see s. 67.

The remuneration of the liquidators is to be fixed by the company in general meeting (f). This remuneration is, as before stated, in some cases, fixed at the meeting at which the appointment of liquidators is made, but frequently not until some subsequent meeting. If necessary or desirable, as in the case of insolvent companies, application can be made to the Court to fix the remuneration (g). The remuneration, of course, varies according to circumstances, but sometimes a resolution is passed that it shall be in accordance with the scale usually adopted by the Court.

The liquidators frequently pay the solicitors' bill of costs

(a) *Oakes v. Turquand*, L. R. 2 H. L. 325, 355. See as to notice of intention to appoint liquidators, *Indian Zoedone Co.*, *infra*, and *cf.* *Anglo-Californian Co. v. Lewis*, 6 H. & N. 174; *Stearic Acid Co.*, 11 W. R. 980; *Bridport Old Brewery Co.*, 2 Ch. 191; *Welsh Flannel Co.*, 20 Eq. 360, and *ante*, p. 403.

(b) *Indian Zoedone Co.*, 26 Ch. D. 70. See *London and Australian Agency Co.*, *supra*.

(c) *Bridport Old Brewery Co.*, 2 Ch. 191; *Hallows v. Fernie*, 3 Ch. 467.

(d) S. 141. *Sheppy Portland Cement Co.*, W. N. (1892), p. 184.

(e) Gen. O. 1862, r. 51. *British Envelope Manufacturing Co.*, W. N. 1885, p. 84.

(f) SS. 133 (3), 135. As to order of payment, see *ante*, Part I., Chap. XIV., p. 248.

(g) SS. 93, 138.

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without taxation, with an undertaking from them, in some cases, to refund any items disallowed. A summons should be taken out to obtain taxation of costs (a).

Provision is made by s. 140 for filling up any vacancy in the office of liquidator by death, resignation, or otherwise (b). The Court may also, on due cause shewn—that is to say, “where there is some unfitness in the wide sense of the term” (c)—remove any liquidator and appoint another (d). The section applies where a motion is made for removal and the liquidator consents to retire (e). It is not necessary to shew personal misconduct, but it must be desirable in the interests of the liquidation that the particular person should not be liquidator (f). Where a supervision order has been made, and it appears that the debts of the company will exceed its assets, it seems that the fact that all the company’s creditors desire the removal of a liquidator appointed by the shareholders is “due cause” for his removal (g). A liquidator who went to Canada was removed (h). A lunatic liquidator has been removed upon the *ex parte* motion of a shareholder, with the usual reference to chambers to appoint a new liquidator, and a direction that the order be served on the company (i). Where a liquidator was intimate with directors and refused to take proceedings against them, it was held that due cause was shewn for removing him (k). The wishes of shareholders will be considered by the Court (l).

Although the Court of Appeal will only reverse the decision of a judge of first instance as to a matter within his judicial discretion where very strong grounds for doing so are shewn, yet the case of the removal of a liquidator is not one of pure judicial discretion, and the Court of Appeal must be satisfied that due cause has been shewn (m).

The application under s. 141 will be made by petition or motion, or, if the judge direct, by summons at chambers (n). The direction that the application should be made by

(a) S. 138.

(b) See s. 140.

(c) *Sir John Moore Gold Mining Co.*, 12 Ch. D. 325.

(d) S. 141.

(e) *Sheppy Portland Cement Co.*, W. N. (1892), p. 184.(f) *Adam Eyton, Ltd., Ex p. Charlesworth*, 36 Ch. D. 299; *Oxford Building, &c., Co.*, 49 L. T. 495.(g) *Oxford Building, &c., Co.*, 49 L. T. 495.(h) *Scotch Granite Co.*, 17 L. T. 533.(i) *North Molton Mining Co.*, 54 L. T. 602.(k) *Sir John Moore Mining Co.*, *supra*.(l) *British Nation Ass.*, *supra*.(m) *Sir John Moore Gold Mining Co.*, *supra*. Cf. in bankruptcy, *Ex p. Sheard, Re Pooley*, 16 Ch. D. 107.

(n) Gen. O. 1862, r. 51.

summons may be given at the hearing of a summons, but the applicant may be put upon terms as to costs (a). Chap. I.

On an application for the appointment of another liquidator in addition to, or in substitution for, the liquidator appointed by a general meeting of shareholders, notice must be given to the liquidator of such application (b). VOLUN-
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Powers and duties of liquidator.—Liquidators ought, as far as possible, in carrying their powers into effect to keep in view the same rules, and proceed upon the same principles, as those which guide the Court in a compulsory winding-up. The company may, by an extraordinary resolution, enter into any arrangement with three-fourths in number and value of the creditors with respect to the powers of, and the manner in which they are to be exercised by, the liquidators (c).

In the absence of fraud, *mala fides*, or personal misconduct, no action for damages will lie against a liquidator by a creditor or contributory for delay in paying the creditor's debt, or in handing over to the contributory his share of the assets (d).

General powers.—(1.) The liquidators may, without the sanction of the Court, exercise all the powers given to liquidators in a winding-up by the Court (e). But the voluntary liquidator may, if he thinks it desirable, apply, under the 138th section, for the approval and confirmation by the Court of any matter (f). And he will generally do so if the question is of great importance.

(2.) The liquidators may exercise the powers given to the Court of settling the list of contributories (g). The form of the list will be that presented by the Act of 1890. It would be advisable that the liquidator should give notice to contributories of an appointment to settle the list; but the notice is not absolutely necessary, as in the case of a winding-up by the Court under that Act (h).

There is a very great distinction between settling the

(a) *British Envelope Manufacturing Co.*, W. N. 1885, p. 84.

(b) *Oxford Building, &c., Co.*, *supra*.

(c) SS. 135 and 136. As to this power, see *ante*, Part I., Chap. X., p. 114; and as to arrangements under the Act of 1870, see *post*, Part IV.

(d) *Knowles v. Scott*, W. N. 1891, p. 39.

(e) S. 133 (7); 53 & 54 Vict. c. 63, s. 4 (3).

(f) *Scinde, Punjaub, &c., Bank Corp.*, W. N. 1867, p. 41; 15 L. T. 602; and s. 95.

(g) S. 133 (8).

(h) *Brighton Arcade Co. v. Dowling*, L. R. C. P. 175, at p. 187; *London Bank of Scotland*, W. N. 1867, p. 114.

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list of the contributories and making calls in the case of a winding-up by the Court, and settling the list and making calls in the case of a voluntary winding-up. In the former case, an order made upon a contributory under s. 101 for a call is, subject to the provision for appeal, made conclusive evidence that the money is due. In the latter, the list of contributories settled by the liquidator is, under s. 133, made only *prima facie* evidence of the liability of the persons named therein to be contributories. Again, in a winding-up by the Court an order for a call may be enforced by execution (s. 120); whereas, in the case of a voluntary winding-up, the payment of a call can only be enforced by action, or by application under s. 138 (a).

The liquidator, where there are many disputed cases, sometimes applies to the Court by summons to settle the list. In ordinary cases he should not apply under s. 138 for a declaration that an alleged shareholder is liable to contribute to the assets, and for an order on the shareholder to pay the amount (b). The proper mode of procedure is for the liquidator to place the name of the alleged shareholder on the list of contributories, and leave the shareholder to take any steps he may think proper to have his name removed therefrom; and this course should be followed, even if all the shares are fully paid except those of an alleged shareholder, who disputes his liability (c).

It seems that the liquidators have power to rectify the register without coming to the Court (d); but it is doubtful whether in a winding-up under supervision they have this power (e).

(3.) The liquidators may, at any time after the resolution for winding-up, make calls, or enforce calls made by the directors (f), upon all or any of the contributories to the extent of their liability (g), or for the purpose of adjusting the rights between fully paid-up shareholders and partly paid-up shareholders (h). This will be done by a printed notice or in writing. Notice of intention to make the call is not necessary, although in some cases it is given (i).

(a) *Per* Bovill, C.J., in *Brighton Arcade Co. v. Dowling*, *supra*.

(b) *Cornwall Brick, Tile, and Terra Cotta Co.*, W. N. (1893), p. 9.

(c) *Ibid.*, *per* Vaughan Williams, J.

(d) *Brighton Arcade Co. v. Dowling*, *supra*.

(e) *Gilbert's Case*, 5 Ch. 559.

(f) *Stone v. City and County Bank*, 3 C. P. D. 282.

(g) See s. 133 (9).

(h) See *Anglesea Colliery Co.*, L. R. 1 Ch. 555.

(i) As to no notice of settling upon the list being necessary, see *Brighton Arcade Co. v. Dowling supra*.

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Orders are often obtained for the payment of calls made before the winding-up, and sometimes this order includes calls after the winding-up (*a*). It may be necessary to apply to the Court as to whether a call should be made (*b*).

The payment of a call in a voluntary winding-up can only be enforced by action in the name of the company (*c*); or if the contributory is on the list, by an application under s. 138, and this is the simplest mode (*d*). A motion by a voluntary liquidator for payment of calls has been dismissed on the ground that the winding-up resolutions were void (*e*).

The rules as to set-off against calls are the same as in a winding-up by the Court (*f*).

(4.) The liquidators may summon general meetings of the company for any purposes they think fit (*g*). If the winding-up continues for more than a year, the liquidators must, at the end of the first and each succeeding year, summon a general meeting of the company, and lay before such meeting an account shewing their acts and dealings and the manner in which the winding-up has been conducted during the preceding year (*h*).

Proper notice should be given by advertisement or otherwise.

(5.) The company's property (which means the same thing as "assets," and includes unpaid capital (*i*)) is to be applied in satisfaction of its liabilities, as they exist at the commencement of the winding-up (*k*) *pari passu* (*l*). But the Crown is entitled to its priority (*m*). Subject to this, the property, unless otherwise provided by the articles, is to be distributed among the members according to their interests in the company (*n*), and their right to the capital cannot be altered by a majority of them (*o*).

(a) See s. 101.

(b) *Holbeck Mining Co.*, 4 T. L. R. 98, which see as to an invalid call.

(c) *Brighton Arcade Co. v. Dowling*, *supra*; *Hull Flax Co. v. Wellesley*, 6 H. & N. 38; *General Discount Co. v. Stokes*, 17 C. B. N. S. 765.

(d) See s. 138. *Whitehouse & Co.*, 9 Ch. D. 595; *Rance's Case*, 6 Ch. 104.

(e) *Cumbrian Peat, &c., Co., Ex p. Mott and Turner*, 31 L. T. 773.

(f) See *ante*, Part I, Chap. IX., p. 187. See *Whitehouse & Co., supra*; *Paraguassu Steam, &c., Co.*,

Black & Co.'s Case, 8 Ch. 254;

Hoby & Co. v. Birch, 62 L. T. 404.

(g) S. 139.

(h) *Ib.*

(i) *Webb v. Whiffin*, L. R. 5 H. L. 711; *Morris's Case*, 8 Ch. 800.

(k) *Ex p. Ashbury*, 5 Eq. 223.

(l) S. 133 (1).

(m) *Henley & Co.*, 9 Ch. D. 469. See *Oriental Bank Corp., Ex p. Crown*, 28 Ch. D. 643.

(n) S. 133 (1). As to the rights of classes of members *inter se*, see *Alliance Soc.*, 49 L. T. 73.

(o) *Griffith v. Paget*, 6 Ch. D. 511.

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Care must be taken, in distributing the surplus assets, to put the contributories as far as practicable on an equality, regard being had to the amounts paid up on their respective shares (*a*).

(6.) The liquidators have power to **sanction transfers** of shares made after the commencement of the winding-up (*b*). But in exercising this power regard ought to be had to the principles acted upon by the Court in like cases (*c*).

(7.) With the sanction of an extraordinary resolution of the company, the liquidators have power to pay any classes of creditors in full, or make **compromises** or other arrangements with creditors or persons having claims against the company (*d*). But if an application is made to the Court, it must be satisfied that the compromise is a fair one, although it has been sanctioned by a general meeting (*e*). The *onus* of impeaching an agreement, or of shewing that it is unreasonable and unfair, falls on the person objecting (*e*).

(8.) With the like sanction, the liquidators may compromise all calls, debts, claims, or any questions in any way relating to the assets of the company or the winding-up. But, of course, the liquidators, if they desire to protect themselves, or where creditors or contributories oppose, may make an application under the 138th section for the sanction of the Court.

A provisional agreement containing the terms of compromise may be entered into, and then the sanction by extraordinary resolution or by the Court obtained; or the terms may, in the first place, be brought before the meeting by the notice, or specified in the summons in applying to the Court with evidence that the compromise is beneficial.

(9.) The liquidators are to **pay the debts** of the company, and the costs, charges, and expenses of winding-up (*f*), and are to **adjust the rights** of the contributories amongst themselves (*g*).

The liquidators should, at the earliest opportunity, **advertise** in the local newspapers and the *Gazette* for

(*a*) See *Ex p. Maude*, 6 Ch. 51; and where shares issued at a discount, see *ante*, Part I., Chap. VIII., p. 131.

(*b*) See *supra*, p. 404, and s. 131.

(*c*) See *ante*, Part I., Chap. VIII., p. 139.

(*d*) See *ante*, Part I., Chap. X.,

and *post*, Part IV., s. 159, and s. 12 of the Act of 1890. As to appeals, see ss. 136, 137.

(*e*) *Lama Coal Co., Ex. p. Miller*, 2 Ch. 692.

(*f*) S. 133 (9).

(*g*) S. 133 (10).

creditors, allowing about six weeks, or longer according to circumstances.

The debts to be paid are the same as in a winding-up by the Court. The liquidators can apply to the Court for the adjudication of a disputed claim, and the proceedings will be similar to those in a winding-up by the Court under the Act of 1862. If, however, there is a probability that there will be several disputed claims, the liquidators sometimes, in order to avoid liability, apply for an order as to the creditors of the company, and the proceedings also in this case up to the chief clerk's certificate will be the same as in a winding-up by the Court under the Act of 1862. In order to exclude creditors who do not prove within a given time, it is advisable that such time should be fixed by the Court, as the fixing of the time does not appear to be one of those things which voluntary liquidators can do alone.

After the dissolution of the company within ss. 142, 143, a creditor who has had proper notice cannot prove for his debt (*a*).

(10.) The provisions of s. 15 of the Act of 1890 apply to all companies wound up, whether compulsorily, or under the supervision of the Court, or voluntarily. The **accounts** must be rendered as there provided, or in default the liquidator is liable to the penalty there mentioned (*b*).

If there has been any improper conduct on the part of the liquidators, or if they so desire, an application can be made, under s. 138, that the liquidators shall bring in and vouch their account.

The liquidators, as soon as the affairs of the company are fully wound up, are to make up an account shewing the manner in which such winding-up has been conducted; and they must call a general meeting of the company for the purpose of having the account laid before them, and hearing any explanation that may be given by the liquidators (*c*).

(11.) **A return to the Registrar of Joint Stock Companies** must be made by the liquidators of such meeting having been held (*d*).

(12.) The liquidators **may sell the business and property** of the company (*e*), or make an application to the Court to sanction a sale, or obtain an order for sale with the

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(*a*) *Westbourne Grove Drapery Co.*, 27 W. R. 37.

(*c*) S. 142.

(*d*) S. 143.

(*b*) *Stock and Share Auction Co.* [1894], 1 Ch. 736.

(*e*) See *post*, Part IV.; and see ss. 95, 133 (7).

Chap. I. approval of the judge. The company will be made a party to a conveyance, as the property does not vest in the liquidators. The company conveys by the direction of the liquidator, and the liquidator covenants against incumbrances (*a*), as a company in liquidation does not covenant for title.

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(13.) Upon obtaining the sanction of the Court on petition (*b*), the liquidators may prosecute directors, managers, officers, or members of the company, for any offence for which they are criminally responsible (*c*).

Several liquidators.—It is not necessary that there should be more than one liquidator (*d*), but if there are several liquidators, the powers given by the Act must be exercised in one of the three following ways:—(1) if nothing is settled at the time of the appointment, by not less than two liquidators; (2) if so determined at the time of the appointment *by the company*, by one or more of them (*e*); (3) and so also where the appointment is by the creditors (*f*). But the liquidators cannot themselves delegate their powers to one of their own body (*g*); for instance, they cannot give a general authority to one to accept bills (*h*), and it is even doubtful whether they can give one of their number authority to accept a specific bill (*i*). So, again, if one of two liquidators die after an agreement entered into by both, but before the company's seal is affixed to a deed carrying out its terms, the surviving liquidator has no power to affix the seal (*k*).

And, consequently, one of two liquidators may render himself liable to make good any deficiency caused by allowing the other to receive moneys alone, which it was the duty of the former to have received jointly with the latter (*l*).

Applications to the Court, s. 138.—With the object of enabling liquidators to obtain the aid of the Court in any particular matter without transferring to the Court the

(*a*) See precedent, p. 580.

(*b*) Gen. O. 1862, r. 51.

(*c*) See s. 168, and *ante*, p. 225, for decisions under s. 167, which will apply.

(*d*) S. 133 (4).

(*e*) S. 133 (6).

(*f*) S. 135.

(*g*) *Ex p. Birmingham Banking Co.*, 3 Ch. 651; *Bolognesi's Case*, 5 Ch. 567. As to mere ministerial

acts this may be otherwise.

(*h*) *Ex p. Birmingham Banking Co.*, *supra*; *Ex p. London and South Western Bank*, 36 L. J. Ch. 807.

(*i*) *Ex p. Agra and Masterman's Bank*, 6 Ch. 206.

(*k*) *Re Metropolitan Bank and Jones*, 2 Ch. D. 366.

(*l*) *Re Gold Co. of Southern India*, Times, March 3rd, 1883.

whole conduct of the winding-up (a), and of preventing the presentation of petitions for supervision orders by contributories (b), the liquidators or any contributory of the company can apply to the Court (c) to determine any question arising in the matter of the winding-up, or to exercise, as respects the enforcing of calls or in respect of any other matters, all or any of the powers which the Court might exercise if the company were being wound up by the Court (d).

The Court must be satisfied that the exercise of the power will be "just and beneficial," when it will make such order as it thinks fit (e).

The section only refers to the liquidators and contributories, and creditors cannot apply (f); but creditors can by petition apply for a compulsory or supervision order. So, also, a creditor may obtain an injunction in an action to restrain a company in voluntary liquidation from distributing assets among its shareholders without setting aside sufficient assets to provide for future liabilities under a lease (g). The application should, in general, be made by the liquidators (h). But where the liquidators have compromised a claim, and some of the shareholders are dissatisfied, it is for them and not for the liquidators to make the application to the Court (i).

It is provided that the application under this section shall be made by petition or motion, or, if the judge shall so direct (k), by summons at chambers (l). As a general

(a) See *Rance's Case*, 6 Ch. 104.

(b) *Bank of Gibraltar and Malta*, 1 Ch. 69; *Imperial Bank of China and Japan*, 1 Ch. 339; *Beaujolais Wine Co.*, 3 Ch. 15; *Star and Garter Hotel Co.*, 28 L. T. 258.

(c) See *Alexandra Printing Ink Co.*, 16 W. R. 456, as to the Court in which applications should be made, and as to subsequent proceedings being in same branch.

(d) S. 138. See *Anglesea Colliery Co.*, 2 Eq. 379; *Crookhaven Mining Co.*, 3 Eq. 69; *Alliance Soc.*, 49 L. T. 73.

(e) S. 138. *Gold Co.*, 12 Ch. D. 77; *Metropolitan Bank, Heiron's Case*, 15 Ch. D. 139.

(f) *Poole Firebrick, &c., Co.*, 17 Eq. 268; *Needham v. Rivers Protection, &c., Co.*, 1 Ch. D. 253. See also *Thomas v. Patent Lionite Co.*,

17 Ch. D., at p. 257.

(g) *Lord Elphinstone v. Monkland Iron Co.*, 11 App. Cas. 332; *Gooch v. London Banking Assoc.*, 32 Ch. D. 41. See *Zuccani v. Nucupai Gold Co.*, 61 L. T. 176; *New Oriental Bank* (2) [1895], 1 Ch. 753.

(h) See *Penysyflog Iron Co.*, 30 L. T. 861. Cf. *Whitworth's Case*, 19 Ch. D. 118.

(i) *Licensed Victuallers' Co.*, 15 W. R. 917.

(k) As to the judge giving such direction on the hearing of a summons, see *British Envelope, &c., Co.*, W. N. 1885, p. 84.

(l) Gen. O. 1862, r. 51. As to dispensing with service and advertisement, see *Monkland Iron Co. v. Henderson*, 16 C. of S. Cas. 494 (Sc.).

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rule, the application is made by motion (*a*) or summons (*b*). In a few cases it is made by petition (*c*).

The application for an order to summon meetings should usually be made by summons, unless there is some particular reason for a motion.

In order to avoid taking out an originating summons upon every application, the liquidators sometimes obtain an order giving general liberty to apply (*d*). The following may be given as instances in which the liquidators occasionally have found it advisable to make use of the section: restraining actions, &c., against the company; staying the winding-up (*e*); raising money; carrying on the business; bringing, or defending actions, &c.; making and enforcing calls; settling, and rectifying, the list of, and enforcing payment from, and settling the rights of, contributories (*f*); set-off (*g*); adjudicating disputed claims; making compromises; declaring dividends; obtaining delivery of the company's books, papers, or other property; taxing costs; inspection of books under s. 156 (*h*); examination under s. 115 (*i*); proceedings under the 10th section of the Act of 1890; unclaimed dividends and surplus assets, &c. (*k*); approval of agreement for sale (*l*). In many of the above cases, the liquidators can, of course, proceed without the aid of the Court, but under particular and important circumstances they sometimes apply for the sanction of the Court. Occasionally a contributory applies under this section for liberty to commence proceedings in the company's name.

But after a resolution to wind up for the purpose of confirming a resolution for amalgamation, dissentient shareholders cannot impeach the amalgamation by means

(*a*) *Union Bank of Kingston-upon-Hull*, 13 Ch. D. 808; *Horbury Bridge Coal Co.*, 11 Ch. D. 109; *Gold Co.*, 12 Ch. D. 77.

(*b*) *Whitehouse & Co.*, 9 Ch. D. 595; *Eclipse Gold Mining Co.*, 17 Eq. 490; *Mercantile Discount Co.*, W. N. 1886, p. 21.

(*c*) *Anglesea Colliery Co.*, 2 Eq. 379; *Australian United Gold Mining Co.*, W. N. 1887, p. 37; *Alliance Soc.*, 28 Ch. D. 559; *South Barrule Slate Quarry Co.*, 8 Eq. 688 (staying winding-up); *Steamship Chigwell*, 4 T. L. R. 308.

(*d*) *Sed quære*: whether there is power to do this under the

section.

(*e*) *Schanschieff Electric Battery Syndicate*, W. N. 1888, p. 166; *Steamship Chigwell*, *supra*.

(*f*) *Anglesea Colliery Co.*, *supra*.

(*g*) *Whitehouse & Co.*, *supra*.

(*h*) *Yorkshire Fibre Co.*, 9 Eq. 650.

(*i*) *Metropolitan Bank, Heiron's Case*, 15 Ch. D. 139, and cases *infra*.

(*k*) *Alliance Soc.*, *supra*; *Eclipse Gold Mining Co.*, *supra*; *Australian United Gold Mining Co.*, *supra*.

(*l*) *Scinde, &c., Bank Corp.*, 15 L. T. 602.

of an application under s. 138, inasmuch as the voluntary winding-up and the amalgamation are one transaction (a).

Leave has been given to a voluntary liquidator, upon an *ex parte* application under this section, to take out a summons in chambers for the examination of persons under s. 115 (b). But upon an application by contributories, it was held that the applicants were entitled to an order to examine the manager as to certain shares held by him, but that it would not be right to make a general order for his examination, as the applicants occupied no official position, and consequently were not under the control of the Court (c). Unless there is a strong case, the Court will not order the examination of a person who has fully answered interrogatories in an action by the voluntary liquidator (d).

Under ss. 89 and 138, the Court has jurisdiction, upon a petition by the liquidator to stay all proceedings in the winding-up with a view to reconstruction, to make an order, on being satisfied with the evidence as to the assent of the creditors (e).

Winding-up order after voluntary liquidation.—The circumstances under which a compulsory order can be obtained after a voluntary winding-up are stated *ante*, Part I., Chap. III., p. 35. It will be pointed out when a supervision order will be made under such circumstances in the next chapter.

Dissolution.—Immediately the affairs of the company are fully wound up, that is to say, as far as the liquidator can wind them up (f), a meeting must be called by advertisement in the *Gazette*, published at least one month previously, and specifying the time, place, and object (g). And a company will be restrained from dissolving without notice to those persons to whom it may in future become liable (h). When it is intended to dispose of the books, &c., the notice must specially refer to this (i).

(a) *Imperial Bank of China and Japan*, 1 Ch. 339. See *Financial Corp.*, W. N. 1866, p. 162; *International Life Ass. Soc.*, 20 L.T. 433.

(b) *Mercantile Discount Co.*, W. N. 1866, p. 21.

(c) *Penysyflog Iron Mining Co.*, 30 L. T. 861.

(d) *Metropolitan Bank, Heiron's Case*, 15 Ch. D. 139.

(e) *Steamship Titian Co.*, 58 L. T. 178. See *Schanschieff Electric Battery Syndicate, supra*.

(f) *London and Caledonian Ins. Co.*, 11 Ch. D. 140.

(g) See s. 142. See form of notice, p. 581. See *ante*, p. 413, as to the liquidator's duty on conclusion of winding-up.

(h) *Haytor Granite Co.*, 1 Ch. 77; *Lowndes v. Garnett, &c., Mining Co.*, 2 J. & H. 282. See *Lord Elphinstone v. Monkland Iron Co.*, and *Gooch v. London Banking Assoc., ante*.

(i) S. 155. See ss. 51, 129.

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The notice for the *Gazette* must be signed by the liquidator and attested; and, in some cases, a duplicate verified by statutory declaration is required.

At the meeting, the resolutions will be passed for the adoption of the liquidator's account, and as to the books, &c., of the company, which are generally retained by the liquidators, they undertaking to destroy the same upon the dissolution of the company. If there has been a sale of the company's property, the resolution then usually directs that the books, &c., be handed over to the purchaser.

On the expiration of **three months** from the date of the registration of the return, which it is necessary that the liquidators should make (*a*), the company is to be deemed to be **dissolved** (*b*). The liquidator is subject to a penalty of £5 for every day default is made in sending in the return (*b*). It is always important that the company should be properly dissolved.

The final account and return to the Registrar by the liquidators in a voluntary winding-up, under ss. 142 and 143, are not to be made until the affairs of the company are fully wound up (*c*).

If a petition has then been presented for winding-up by the Court, the company cannot be dissolved (*d*).

After such dissolution, the Court has no jurisdiction to make a winding-up order, except, possibly, in a case of fraud (*e*). So claims by creditors must not be delayed until after dissolution (*f*). Nor can a shareholder sustain an action against a director to replace dividends paid out of capital (*g*). But the Court has jurisdiction to make an order in the matter of the voluntary winding-up after the expiration of the three months, if the application for the order has been made before the three months have elapsed (*h*).

(*a*) See *supra*.

(*b*) S. 143.

(*c*) *Pinto Silver Mining Co.*, 46 L. 7. Ch. 777.

(*d*) *Crookhaven Mining Co.*, 3 Eq. 69.

(*e*) *Pinto Silver Mining Co.*, 8 Ch. D. 273; *London and Caledonian Ins. Co.*, 11 Ch. D. 140. See *Schooner Pond Coal Co.*, W. N. 1888, p. 170; *Westbourne Grove Drapery Co.*, 27 W. R. 37;

39 L. T. 30. But see *Zuccani v. Nacurai Gold Co.*, 61 L. T. 176, as to the interest of a person in a company being lost after a voluntary winding-up. See *Alfreton, &c., Soc.*, 11 W. R. 301.

(*f*) *Westbourne Grove Drapery Co.*, *supra*.

(*g*) *Coxon v. Gorst* [1891], 2 Ch. 73.

(*h*) See *Crookhaven Mining Co.*, 3 Eq. 69.

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What it is.	Applications to the Court.
Practice on, and service of, petition.	Proof of debts and claims.
When supervision order will be made.	Contributories and calls.
Building Society.	Transfer of company's business or property.
Supervision or compulsory order.	Other provisions applicable.
Commencement of winding-up.	Dissolution.
Effect of supervision order.	
The liquidators.	

UNDER the Companies (Winding-up) Act, 1890, s. 31 (2), a company is not deemed to be wound up by order of the Court if the order is to continue a winding-up under supervision. Speaking generally, the 1890 Act does not apply to winding-up under supervision (*a*). The following sections, however, do apply: 3, 10, 14, 15 (*b*). By rule 180 of the C. W. U. R. 1890, the rules under the General Order 1862 are not to apply to compulsory windings-up, but the rules of that order must still be observed in a winding-up under supervision where the assistance of the Court is required.

No **unregistered company** can be wound up voluntarily or subject to supervision (*c*). But a company registered under the former Joint Stock Companies Acts, although not registered under the present Act, can be wound up under supervision (*d*).

What it is.—The practical difference between winding-up voluntarily and winding-up subject to supervision consists mainly, if not entirely, in the comparative facilities for

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(*a*) 53 & 54 Vict. c. 63, s. 31 (2).

(*b*) *Stock and Share Auction Co.* [1894], 1 Ch. 736; *New Terras Tin Mining Co.* [1894], 2 Ch. 344.

(*c*) S. 199 (2). See s. 199 for what is included under the term

"unregistered company."

(*d*) *London India Rubber Co.* 1 Ch. 329; *Beaujolais Wine Co.*, 3 Ch. 15; *Torquay Bath Co.*, 32 Beav. 581; *Great Barrier Co.*, W. N. 1868, p. 244.

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obtaining the assistance of the Court, and in the comparative ease with which the liquidator can be controlled, and executions against the company prevented. Under a supervision order, creditors can apply to the Court, but this is doubtful in the case of a voluntary winding-up. The winding-up order subject to supervision simply continues the voluntary winding-up upon such terms and conditions as the Court thinks just.

Such an order, in fact, presupposes an existing winding-up, and if the resolution to wind up voluntarily has been informally, irregularly, or for some other reason **improperly** passed, the Court cannot make an order to wind up subject to supervision (*a*). The petition, however, might be allowed to stand over to enable the shareholders to pass a proper resolution, for, otherwise, the Court could only dismiss it, or make a compulsory order. But the contributories, in the case of an informal resolution to wind up voluntarily, ought not to present a petition immediately, but another meeting should be called (*b*).

Where a petition for a compulsory winding-up has been presented, and a supervision order made thereon, and some irregularity in the voluntary winding-up is subsequently discovered, the supervision order will be discharged on motion, and the petition may be re-heard without fresh advertisement, or service on consent of all parties entitled to be served, and a compulsory order made on the original petition (*c*). But the application must now be made to the Court of Appeal (*d*).

Practice on, and service of, petition.—A petition for a winding-up subject to supervision, for the purpose of giving jurisdiction to the Court over actions, is deemed to be a petition for winding up the company by the Court (*e*).

A petition for a winding-up subject to supervision must be presented in the same way as a petition for a compulsory order; and service of it must be made upon the

(*a*) *Bridport Old Brewery Co.*, 2 Ch. 191. See also *National Savings Bank Ass.*, 1 Ch. 547; *Patent Floor Cloth Co.*, 8 Eq. 664; *Manchester Economic Building Soc.*, 24 Ch. D. 488. As to a subsequent discovery of irregularity in meeting and the facts necessary to be stated in a petition, see *Sheffield Mortgage, &c., Co.*, W. N. 1887, p. 218. See *New British Iron Co.*, *infra*.

(*b*) *London Flour Co.*, 16 W. R. 552.

(*c*) *Patent Floor Cloth Co.*, 8 Eq. 664.

(*d*) *Manchester Economic Building Soc.*, *supra*. See *London and Mediterranean Bank*, W. N. 1866, pp. 207, 317.

(*e*) S. 148. *Oriental Commercial Bank*, 15 W. R. 7; *London Flour Co.*, 16 W. R. 552. But see s. 31 (2) of the Act of 1890.

company as well as upon the liquidator, or, if the liquidator joins in the petition, upon the company (*a*), unless the registered office is unoccupied (*b*). If the liquidator is alone the petitioner, the company must be served (*c*).

On a petition for a supervision order, the company ought to appear by the liquidator, and the costs of a separate appearance will not be allowed (*d*).

As a supervision order presupposes a prior resolution to wind up, and continues it, the petition should set out the resolutions; and there should be an affidavit shewing that the requisites of a valid voluntary liquidation had been complied with, and such affidavit should be mentioned as read in the order made on the petition (*e*). A petition for a compulsory order may be amended by praying for a supervision order; fresh advertisement, as a rule, is now required (*f*); and where a petition for a supervision order is amended by praying for a compulsory order, re-advertisement is also required (*g*).

A supervision order may be made without prejudice to the question whether or not the liquidator has been duly appointed (*h*).

When supervision order will be made.—See *ante*, Part I., Chap. III., p. 35. In the determination of what should be done upon a petition for a supervision order, the Court may have regard to the wishes of the creditors or contributories, and may summon meetings for the purpose of ascertaining their wishes (*i*). With the exception of this provision, it is entirely in the discretion of the Court whether it will or will not make an order (*k*). Before, however, making a supervision order the Court will, in

(*a*) See Gen. O. 1862, r. 3, *Inventors' Ass.*, 13 W. R. 1015; *Oxford Building, &c., Co.*, 49 L. T. 495; *Petroleum Co.*, 15 W. R. 29.

(*b*) *Stewart and Brother*, W. N. 1880, p. 15; *Petroleum Co.*, *supra*.

(*c*) *Pannonia Leather, &c., Co.*, 13 W. R. 1015.

(*d*) *A. W. Hall & Co.*, 34 W. R. 56.

(*e*) *New British Iron Co.*, 32 Sol. Jo. 91; *Sheffield Mortgage, &c., Co.*, W. N. 1887, p. 218.

(*f*) See, as to re-advertising petitions, *ante*, Part II., p. 328. See *Marine and General Land Co.*, 62 L. T. 723; *United Bacon Curing Co.*, W. N. 1890, p. 74, under old

practice, where re-advertisement not required.

(*g*) *National Whole Meal Bread Co.* [1891], 2 Ch. 151; and see *ante*, Part II., p. 328.

(*h*) *Horner & Sons*, W. N. 1867, p. 240.

(*i*) S. 149.

(*k*) S. 147. *Chepstow Bobbin Mills Co.*, 36, Ch. D. 563. As to objections by the company to a supervision order, see *Monkland Iron Co. v. Dun*, 14 C. of S. Cas. 242 (Sc.). As to the discretion which the Court of Appeal will exercise as to continuing a voluntary winding-up under supervision, see *Ex p. Wragge*, 37 L. J. Ch. 220.

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any case, consider whether the circumstances are such as to necessitate the order with the object of putting in force some of the provisions of the Act which would not be available under a mere voluntary winding-up (a). But where a creditor only asked for a supervision order, the Court declined to make a compulsory order upon the application of a majority of the creditors (b).

Under ordinary circumstances, a supervision order will not be made on the petition of a contributory, unless there has been fraud, or an inequitable overbearing of the rights of a dissentient minority by improper influence in passing the resolution for winding-up voluntarily; for the Court will not willingly interfere with the decision expressed by the shareholders in the tribunal created by the Act (c). But the case may be different where the company is insolvent beyond all doubt (d). The mere fact that charges of misconduct are made against the voluntary liquidators, if the majority of shareholders wish to continue the voluntary winding-up (e), does not alone constitute a sufficient case for a supervision order on a shareholder's petition (f); as that is a matter which can be dealt with under the 10th section of the Act of 1890, or at all events under the 138th section (g).

A person who has a claim for unliquidated damages does not become a creditor so as to entitle him to present a petition for a supervision order any more than for a compulsory order. There is a case, however, where it appears to have been considered that a creditor, after making an offer to refer to arbitration an unliquidated claim, which was refused by the company, then being in voluntary

(a) But see *Paraguassu Steam, &c., Co.*, 8 Ch. 254, 263; *Rance's Case*, 6 Ch. 104, 115.

(b) *Chepstow Bobbin Mills Co.*, *supra*.

(c) See *Bank of Gibraltar and Malta*, 1 Ch. 69; *Beaujolais Wine Co.*, 3 Ch. 15; *London and Mercantile Discount Co.*, 1 Eq. 277; *Imperial Merc. Credit Ass.*, W. N. 1866, p. 257; *Oriental Commercial Bank*, 15 W. R. 7; *St. David's Gold Mining Co.*, 14 W. R. 755; *Madras Coffee Co.*, 17 W. R. 643; *Ex p. Fox*, 6 Ch. 176. See also *Langham Skating Rink Co.*, 5 Ch. D. 669; *Gold Co.*, 11 Ch. D. 701; *Middlesborough Assembly*

Rooms Co., 14 Ch. D. 104.

(d) *Prince of Wales Slate Quarry Co.*, 18 L. T. 77.

(e) *Sir John Moore Gold Mining Co.*, W. N. 1887, p. 183.

(f) *Star and Garter Hotel Co.*, 42 L. J. Ch. 374. See *Imperial Bank of China and Japan*, 1 Ch. 339, as to the allegation necessary in the petition; *Beaujolais Wine Co.*, 3 Ch. 15.

(g) As to an action by the shareholders against the liquidator, as to applying to remove the liquidator, see *London and Mediterranean Bank*, W. N. 1866, p. 317; *London Bank of Scotland*, 15 W. R. 1103.

liquidation, might obtain a supervision order for the purpose of having his claim estimated in chambers (a). In the case of a **creditor's petition**, where the misconduct alleged is that the assets are being improperly applied, an order may be made (b). A supervision order will be made for the purpose of restraining Scotch actions against the company (c).

Upon threat of actions against a company, the **liquidator** may petition the Court to continue the voluntary winding-up of the company under supervision, as the liquidator is entitled to the protection of the Court under ss. 87 and 151, and s. 138 does not apply to the threat of an action made subsequent to and outside the voluntary winding-up (d).

Building Society.—See *ante*, Part I., Chap. II., p. 13.

Supervision or compulsory order (e).—Although, where a voluntary winding-up has commenced, the Court will have regard to the wishes of the creditors as expressed at a meeting called for the purpose (f), yet, before the Act of 1890, it would make an order to continue the winding-up subject to supervision in preference to making a compulsory order (g), unless a compulsory order was desired by a majority of creditors, or there was some other good reason for making it (h). But where there are special circumstances, the Court, although creditors wish for a compulsory order, may consider it more convenient for them to make a supervision order (i). It sometimes happens that the whole assets of a commercial company are insufficient to pay the debentures, and irregularities in the company's management have occurred which require investigation. The

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(a) *Yniscedwyn Iron Co.*, 19 W. R. 194. See this case as to costs under the above circumstances.

(b) *Caerphilly Colliery Co.*, 32 L. T. 15.

(c) *Middlesborough Fire Brick Co.*, 52 L. T. 98.

(d) *Zoedone Co.*, 53 L. J. Ch. 465. In this case the liquidator was a shareholder.

(e) See also *ante*, Part I., Chap. III., p. 35.

(f) S. 149. See *per Selwyn, L.J.*, in *London Flour Co.*, 16 W. R. 552, as to the application of this section.

(g) *Inns of Court Hotel Co.*, W. N. 1866, p. 348; *United Merthyr Collieries Co.*, W. N. 1867,

p. 99; *Oriental Commercial Bank*, 15 W. R. 7; *West Hartlepool Ironworks Co.*, 10 Ch. 618. As to conflicting winding-up orders, see *London and Mediterranean Bank*, W. N. 1866, pp. 207, 317.

(h) See *West Surrey Tanning Co.*, 2 Eq. 737; *Barned's Banking Co.*, 14 W. R. 722; *London and Mediterranean Bank*, *supra*. But see *Chepstow Bobbin Mills Co.*, 36 Ch. D. 563.

(i) *Owen's Patent Wheel, &c., Co.*, W. N. 1873, p. 226; *Simon's Reef Mining Co.*, W. N. 1882, p. 173; *Trowbridge Water Supply Co.*, 18 L. T. 115; *Imperial Mercantile Credit Ass.*, W. N. 1866, p. 257.

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debenture-holders oppose a compulsory order as likely to injure the good-will of the business, but are unwilling to spend money in proceedings against the directors. In a recent case (*a*), Vaughan Williams, J., made a supervision order, the debenture-holders undertaking, after an investigation by the liquidator into the alleged irregularities, to elect either themselves to take proceedings against the directors, or to allow the liquidators to take such proceedings for the benefit of the unsecured creditors, and in the latter event to give up all right to any property so recovered (*a*). As the debenture-holders could compromise the action immediately, it is submitted that such an order would best be made effective by including an undertaking by the debenture-holders to prosecute the action under the direction of the Court, and not to compromise or stay without its sanction.

It seems that the Court will not make a compulsory order under a petition for a supervision order if the petitioners do not consent, but it may allow the petition to stand over, to enable the creditors, if they choose, to present a petition of their own (*b*).

Whenever a supervision order is required, it is advisable that the petition should ask for a compulsory order, and in the alternative for a supervision order. This avoids any re-advertisement of the petition being required (*c*).

But supervision orders under the old practice have been made on a petition for a compulsory order, the petition being treated as amended by stating the resolution for voluntary winding-up, and praying for its continuance under supervision (*d*).

The Court has jurisdiction upon a petition for a compulsory winding-up to make an order although a supervision order has already been made; but there are few cases in which the Court would deem it advisable to exercise such jurisdiction (*e*). As to Official Receiver's power to petition for a compulsory order, see *ante*, Part II., p. 285.

Proceedings have been stayed under a compulsory order, so that a voluntary liquidation might be continued under

(*a*) *Bywater, Tanqueray, and Phayre, Ltd.*, 31 July, 1895. See minute of order, p. 497, *post*.

(*b*) *Electric and Magnetic Co.*, W. N. 1881, p. 98.

(*c*) As to re-advertisement, see *ante*, Part II., p. 328.

(*d*) *Fodgkinson v. Kelly*, 6 Eq. at p. 499.

(*e*) *Orrell Colliery Co.*, W. N. 1879, p. 106; *Patent Floor Cloth Co.*, 8 Eq. 664; *London and Mediterranean Bank*, 15 W. R. 33.

the supervision of the Court (*a*). So where a resolution for voluntary winding-up was passed, after an order to wind up by the Court, a supervision order was made with the assent of creditors and shareholders (*b*).

It makes no difference under s. 145 whether the voluntary winding-up commenced before or after the presentation of the petition (*c*).

Commencement of winding-up.—See *ante*, Part I., Chap. VI., p. 77.

Effect of supervision order.—A petition for a winding-up subject to the supervision of the Court gives the Court the same jurisdiction over actions as a petition for winding up the company by the Court; and, accordingly, an application may be made *ex parte* immediately on the presentation of the petition to restrain actions, &c. So, also, as to an execution, sale, or distress. See Part I., Chap. V., p. 58.

Such a petition has also the same effect on a fraudulent preference as a petition for a compulsory order, as to which see Part I., Chap. VI., p. 62.

Except as regards the powers of the liquidators, an order for a winding-up subject to the supervision of the Court is for all purposes equivalent to an order to wind up compulsorily, and confers full authority on the Court to make calls, or to enforce calls made by the liquidators, and to exercise all other powers which it might have exercised if a winding-up order by the Court had been made.

In matters of importance, or in case of opposition, the liquidator should apply to the Court.

The liquidators.—The voluntary liquidators remain in office unless otherwise provided by the supervision order (*d*). An additional liquidator, chosen by the creditors, may be appointed; this practically secures to them the same protection as the appointment of a liquidator under a compulsory order (*e*). And when an order is made for winding-up

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(*a*) *Bristol Victoria Pottery Co.*, W. N. 1872, p. 85.

(*b*) *British Soap, &c., Co.*, W. N. 1869, p. 87.

(*c*) *New York Exchange, Ltd.*, 39 Ch. D. 415.

(*d*) Where a compulsory order made after a supervision order, liquidator continued, *London and Mediterranean Bank*, 15 W. R. 33.

As to asking for the confirmation of an appointment of a liquidator in a petition for winding-up under supervision, see *Monkland Iron Co. v. Dun*, 14 C. of S. Cas. 242 (Sc.).

(*e*) See *Llanfyrnach Mining Co.*, 9 W. R. 500, where one was appointed without an order being made.

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subject to supervision, the Court may then, or subsequently, appoint any additional liquidator or liquidators (*a*).

The Court may also have regard to the wishes of creditors and contributories and may direct meetings to be held (*b*).

The order may be made without prejudice to any question as to whether the liquidator has been duly appointed (*c*).

If the contributories do not at the proper time exercise their right of appointing a liquidator, the judge may appoint one on making the supervision order, and the Court of Appeal will not interfere with his discretion (*d*).

The Court has refused to appoint any additional liquidator, upon the ground that, there being a very hostile feeling between the parties, such an appointment would lead to litigation and expense, and if more than one were appointed, would lead to the person originally appointed being outvoted (*e*). The Court has jurisdiction to give the conduct of any particular matter arising in the course of the liquidation to one of several liquidators (*f*).

But the shareholders can meet and resolve on the appointment of a new liquidator after a supervision order has been made, and this is the best course in order to inform the Court of their wishes (*g*).

Restrictions may be imposed by the Court on the liquidator, and a committee of inspection appointed (*h*). Supervision orders now always provide that the liquidator shall file a monthly report with the registrar as to the position of and progress made with the winding-up, and that the remuneration of the liquidator and the costs of his solicitor, or any manager, accountant, auctioneer, or broker, be allowed or taxed by the registrar. See form of Order, *post*, p. 497.

An additional liquidator must give security, though none has been given by the voluntary liquidator (*i*).

Where the Court makes a supervision order, it has jurisdiction to remove any liquidator whom the company itself has previously appointed (*k*). This may be done

(*a*) S. 150. See also ss. 93, 141. *Monkland Iron Co. v. Dun*, *supra*.

(*b*) S. 149.

(*c*) *Horner & Sons*, W. N. 1867, p. 240.

(*d*) *London Quays Co.*, 3 Ch. 394.

(*e*) *Ib.*

(*f*) *Midland Land, &c., Corp.*, W. N. 1887, p. 58.

(*g*) *Montrotier Asphalte Co.*,

W. N. 1874, p. 172.

(*h*) *Watson & Sons, Ltd.* [1891], 2 Ch. 55. See *ante*, Part I., Chap. III., p. 38.

(*i*) *Hampshire Land Co.* [1894], 2 Ch. 632, not following *European Bank, Ex p. Paul*, 19 W. R. 268; *Aberavon Tin Plate Co.*, 57 L. J. Ch. 761.

(*k*) *Ex p. Pullbrook*, 13 W. R. 3; *Devonshire Coal Co.*, W. N.

without any proof of misconduct or unfitness if it will conduce to the more efficient winding-up of the company (a).

When a supervision order has been made, it seems that the fact that all the creditors desire the removal of the liquidator appointed by the shareholders, when it appears that the debts of the company will absorb the whole of its assets, is "due cause" for his removal, within the meaning of s. 141 (b).

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Powers and duties.—The liquidators appointed by the Court have the same powers, are subject to the same obligations, and in all respects stand in the same position, as if they had been appointed by the company (c). And, unless any restrictions are imposed by the Court, the liquidators appointed to conduct a winding-up subject to supervision exercise all their powers without the intervention of the Court, in the same manner as if the company were being wound up altogether voluntarily (d).

In one case an order was made that the liquidator should conduct the winding-up subject to such restrictions as a liquidator would in a compulsory winding-up be subject to, except so far as the Court might, on application for that purpose, modify or dispense with such restrictions in any case or class of cases (e).

It is doubtful what is the extent of their power to compromise under s. 160 without the sanction of the Court (f). It is also doubtful whether, in a winding-up under supervision, the liquidators have power to rectify the register (g).

Where a company is being wound up under supervision, the liquidators cannot recognize the release of one of its contributories, declared by a deed of the directors, without first obtaining the sanction of the Court (h).

In important matters the liquidators should apply to the Court for its sanction, but, of course, in some cases the winding-up may be completed without any necessity arising for such an application. An application is sometimes

1878, pp. 71, 173; *United Merthyr Collieries Co.*, 16 L. T. 170. As to removal of liquidators, see *ante*, Part II., p. 268, and Part III., Chap. I., *ante*, p. 408.

(a) *Marseilles Extension Ry. Co.*, 4 Eq. 692; *Adam Eyton, Ltd.*, 36 Ch. D. 299.

(b) *Oxford Building, &c., Co.*, 49 L. T. 495.

(c) S. 150.

(d) S. 151. See *Anglo-Romano Co.*, *Wright's Case*, 5 Ch. 437.

(e) *London Quays Co.*, 3 Ch. 394.

(f) See *Wright's Case*, *supra* (consent of shareholders given and sanction unnecessary). See also *Gilbert's Case*, 5 Ch. 559; *James v. May*, L. R. 6 H. L. 328.

(g) *Gilbert's Case*, 5 Ch. 559.

(h) *James v. May*, L. R. 6 H. L. 328.

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Liquidators under supervision must render accounts under s. 15 of the Act of 1890 (*a*).

The liquidator has power to appoint a solicitor.

Applications to the Court.—When a supervision order is made, liberty may be given to *creditors*, contributories, or others to apply at chambers (*b*). As already stated, in a purely voluntary winding-up, it is doubtful whether creditors can apply. The application may be made by summons.

Proof of debts (*c*).—Upon the summons of the liquidators, the debts and claims may be adjudicated on by the Court; but when this is not considered necessary, the liquidators will at once issue the usual notices to creditors, if not already forwarded, and make out the list in precisely the same manner as in a voluntary winding-up.

In case of any disputed claims, applications can be made to the Court by the liquidators to adjudicate upon them as in a voluntary winding-up. The application will be by summons. The advertisement will be the same as in a winding-up by the Court. Claimants, also, can apply to the Court as in a winding-up by the Court.

The person seeking to prove must allege and shew himself to be a creditor at the date of his proof for the amount he seeks to recover; and the date of the order for continuing the voluntary winding-up under supervision does not affect the question (*d*).

Dividends can be paid by the liquidators as in a voluntary winding-up, or, after adjudication by the Court, application can be made by summons for liberty to declare the dividends as in a winding-up by the Court. But, as a rule, dividends are declared without applying to the Court.

Contributories and calls (*e*).—The liquidators, after the supervision order, will, as a general rule, make out and settle the list of contributories as in a voluntary winding-up; but they may apply to the Court to settle it, if it is considered desirable. The calls are also usually made by the liquidators, who, when necessary, obtain the assistance of

(*a*) *Stock and Share Auction Co.*
[1894], 1 Ch. 736.

(*b*) S. 147.

(*c*) See also *ante*, Part I., Chap.
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(*d*) *Ex p. Maxondoff, Re Oriental*
Commercial Bank, 6 Eq. 582.

(*e*) See also *ante*, Part I., Chaps.
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the Court to enforce payment; but application may be made to the Court to make the calls. Any contributory may apply by summons to strike his name off the list, or to put some other contributory on it.

Transfer of company's business or property.—See *post*, Part IV. Where there has been a supervision order, the Court, by s. 95, is at liberty, without any special resolution, to sanction an arrangement which in case of a voluntary winding-up could only be made by a special resolution under s. 161 (*a*).

Other provisions applicable.—The provisions relating to the following matters are also applicable to a winding-up under supervision in the same manner as in a winding-up by the Court under the Act of 1862; inspection of books, &c. (*b*); dispositions after the commencement of the winding-up (*c*); power to compromise (*d*); taxation of costs (*e*); prosecution of delinquent directors (*f*); preliminary examination of officials (*g*).

As to misfeasance, see s. 10 of the Act of 1890, *ante*, Part II., p. 280, and *ante*, Part I., Chap. XII.

Dissolution.—As a rule, the final meeting is called by the liquidators, and the company is dissolved in the same manner as in a voluntary winding-up (*h*). An application, however, is, in some few cases, made to the Court that the liquidators should make up an account, and call a general meeting (*h*).

(*a*) *Cambrian Mining Co.*, 48 L. T. 114.

(*b*) See Part I., Chap. XI., p. 204.

(*c*) See Part I., Chap. VI.

(*d*) See Part I., Chap. X.

(*e*) See Part I., Chap. XIV., p. 259.

(*f*) See Part I., Chap. XII., p. 197.

(*g*) See Part I., Chap. IX.

(*h*) See p. 413.

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PART IV.
RECONSTRUCTION, AMALGAMATION,
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RECONSTRUCTION, AMALGAMATION, AND ARRANGEMENTS.

Part IV. IT often is advisable to reorganize a company on a fresh basis with regard to the powers of the company, or the rights of (*a.*) its shareholders, or (*b.*) of both its shareholders and creditors. Where the parties whose interests would be affected are numerous it would be practically impossible to carry out such a reorganization, inasmuch as any insignificant minority declining to concur would be in a position to veto the proposals, unless some special provision had been made by the Legislature enabling the majority of the shareholders or creditors respectively to bind the dissentient minority of their class.

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To meet this difficulty there are several provisions in the Companies Acts whereby, notwithstanding the opposition of a minority, a company is enabled to carry out—

(1.) A **reconstruction** of the company, affecting only the shareholders and leaving creditors unaffected, but at the same time enabling creditors to stop the reconstruction by applying for a winding-up order (either compulsory or under supervision) within one year.

(2.) An **amalgamation** of the company with one or more other companies. This is usually carried out by means of reconstruction, but in some respects it calls for separate treatment in a work such as the present.

(3.) An **arrangement** affecting the interests of shareholders and creditors, or of either one of those classes.

Reconstruction.—Section 161 of the Act of 1862 (which is set out at length in the Appendix) provides—

(1.) That where a company is (*a.*) proposed to be, or (*b.*) is in course of being wound up *altogether voluntarily*, and the whole or a portion of its business or property is proposed to be transferred to another company, the liquidators may, with the sanction of a *special resolution*, receive in compensation or part compensation for such transfer or

sale, shares, policies, or other like interests in such other company for the purpose of distribution amongst the members of the company being wound up, or enter into arrangements whereby the members of the company being wound up may participate in the profits of, or receive any other benefit from, the purchasing company.

(2.) That any such sale or arrangement shall be binding on the members of the company being wound up, but that if any member who has not voted in favour of the special resolution at either of the meetings held for passing the same expresses his dissent from such resolution in the manner and within the time mentioned in the section, such dissentient member may require the liquidators either—

(a.) To abstain from carrying the resolution into effect ;
or,

(b.) To purchase the interest of the dissentient member at a price to be determined under s. 162, either by agreement or arbitration, such purchase-money to be paid before the company is dissolved, and to be raised by the liquidators in such manner as may be determined by special resolution.

(3.) That no special resolution shall be deemed invalid by reason that it was passed antecedently to or concurrently with any resolution for winding-up or for appointing liquidators ; and

(4.) That if an order be made within a year for winding up the company by or subject to the supervision of the Court, such resolution shall not be of any validity unless it is sanctioned by the Court..

When a reconstruction is desirable.—A case for reconstruction (as distinct from amalgamation, which is separately treated hereafter) usually arises when it is desired to make some alteration in the objects, or to deal with the capital of the company in a manner which cannot be effected by the company as originally constituted, and cannot be carried out, or conveniently carried out, under the provisions in the Acts for the alteration of the memorandum of association or the reduction of the capital of a company, as to which see *post*, Part V.

For instance, it may be desired to carry on some business quite foreign to the purpose for which the company was formed, or to reduce, subdivide, or otherwise deal with the capital of the company, or to issue new shares with preferential rights which could not be

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Under such circumstances a new company is formed and registered, which is so constituted that the desired object can be carried out; and provided that the majority of shareholders desirous of making the alteration is large enough to carry a special resolution, the undertaking of the old company is sold, under the provisions of s. 161, to the new company, in consideration of shares or other interests in the new company which the shareholders take in exchange for their interests in the old company.

Creditors.—The section does not mention creditors, but they are bound by a sale under its provisions (*a*); the remedy of a creditor who cannot get payment of his debt is to obtain an order winding up the old company before the expiration of a year (*a*), in which case, under the last proviso to the section, the reconstruction is avoided, unless sanctioned by the Court.

The liquidators have no power to release a dissentient shareholder from his liability to the creditors, but only to purchase his interest in the company, and the fact that such purchase is carried out by a transfer of his shares makes no difference to his liability (*b*).

Where a shareholder, on reconstruction, accepted fully paid shares and partly paid debentures in exchange for partly paid shares in the old company, he was held not entitled as against creditors of the old company, who had not assented to the scheme, to treat the instalments paid on his debentures as being in reduction of his liability to the old company (*c*).

After a year, however, it seems that the shareholder is under no liability to creditors (*d*).

If a creditor accepts a substituted security of the purchasing company and the purchase is set aside as *ultra vires*, the Court can remit the creditor to his original rights against the selling company (*e*).

Practice.—The first step where the company is not already in liquidation is to call a meeting for the purpose of resolving that the company be wound up voluntarily, and

(*a*) *City and County Investment Co.*, 13 Ch. D. 475.

(*b*) *Vining's Case*, 6 Ch. 96.

(*c*) *Ex p. Jeaffreson*, 11 Eq. 109. As to liability to costs, see

Ex p. Poole's Executors, 8 Ch. 702.

(*d*) *City and County Investment Co.*, *supra*.

(*e*) *Saxon Life Assurance Co.*, *Anchor Case*, 2 J. & H. 408.

authorizing the liquidators to sell all the undertaking of the company under s. 161 to a new company on the terms of a scheme of reconstruction. The notice must shew clearly that the proceedings are to be under s. 161 (a). With the notice convening the meeting a copy of the scheme should be sent to each shareholder. It can either form part of the notice or be a separate document (b). It is not essential that a scheme of reconstruction should be formulated, and if that course is not adopted, the draft agreement for sale to the new company should be prepared before and submitted to the meeting. As a rule, it is found more convenient to have a scheme in plain untechnical language, so that the shareholders can understand exactly what it is to which they are asked to agree.

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If the resolution is duly carried, the next step is to call the second meeting for the purpose of confirming the resolution (c). It is not competent to call both meetings by one circular (d).

If duly confirmed, a printed copy of the special resolution must be sent to the Registrar of Joint Stock Companies, and the resolution must be advertised in the *Gazette* (e). The advertisement may state that the winding-up is for the purpose of reconstruction only.

The company is now in liquidation, and under the terms of the resolution the liquidators are in a position to carry out the sale to a new company. The first thing to do is to prepare the memorandum and articles, and register the new company. As a general rule, where there is little doubt that the reconstruction will be agreed to (and in most cases the opinions of the shareholders have been sounded before the meetings are called), the draft Memorandum and articles of the new company, the scheme for reconstruction and the agreement for sale to a trustee for the new company, are all prepared before the meetings are called, the memorandum and articles conferring on the company the powers, or containing the provisions as to capital, for the attainment of which the reconstruction is being carried out; and the agreement for sale providing for the transfer of all the assets of the old company to the new one, subject to the debts and liabilities of the old company, and the costs of the reconstruction, and providing for the

(a) *Imperial Bank of China v. Bank of Hindustan*, 6 Eq. 91; *Ex p. Fox*, 6 Ch. 176.

(b) See form, *post*, p. 586.

(c) See form of notice, *post*, p. 585.

(d) *Alexander v. Simpson*, 43 Ch. D. 139.

(e) See *ante*, p. 401, as to voluntary winding-up generally.

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allotment of shares in the new company to the members of the old company, in accordance with the scheme. The advantage of having the documents previously prepared is that, as soon as the resolution is confirmed, the new company can be forthwith registered and the sale proceeded with without delay.

Name of new company.—The new company may be formed under the same name as the old company, if the consent of the latter is testified to the satisfaction of the registrar (*a*). If the same name is to be adopted, the resolutions should authorize the liquidator to consent (*b*), and he should give formal notice to the registrar, stating that the company “is in course of being dissolved,” and that on behalf of the company he “testifies its consent” to the registration of a new company by the same name.

When the new company is registered, a short agreement is entered into by it adopting the agreement for sale, and in due course the transfer of the property is completed in the usual way.

If fully paid shares are to be issued, the agreement must be filed under s. 25 of the 1867 Act. Usually it is found expedient to file supplemental contracts identifying the numbers of the shares and specifying the allottees. The agreement should be executed by both parties (*c*).

Dissentients.—Provision must be made for raising any sum necessary for paying out members who give notice that they dissent from the resolution in accordance with s. 161. The usual arrangement is for the agreement for sale to provide that the new company shall pay to the liquidator all such sums as he may require to purchase the interests of dissentients (*d*). If this course is not adopted, the liquidator of the old company raises the required sum by sale of shares in the new company.

A shareholder may do one of three things: (1.) Assent. (2.) Take no steps, and abandon all his interest in the companies. (3.) Dissent. The following are the requirements for effectual dissent:—

(*a*.) The member must not vote in favour of the resolution at either meeting.

(*b*.) He must give written notice expressing his dissent,

(*a*) S. 20 of 1862 Act.

(*b*) See form, p. 585.

(*c*) *New Eberhardt Co.*, 43 Ch. D.
118; *Elsner and McArthur's Case*

[1895], 2 Ch. 759. See *ante*, Part I., Chap. VIII., p. 130, as to this.

(*d*) See clause 5 of form, p. 588.

addressed to the liquidators, or one of them, and left at the registered office of the company within seven days from the second meeting.

- (c.) In the same notice (a) he must require the liquidators either to abstain from carrying the resolution into effect, or to purchase his interest.

Notice of dissent given before the special resolution is confirmed is valid (b); probably a notice given before any resolution was passed would not be good (b).

If a member do not dissent in the manner and time specified, he must either accept the new shares or take nothing (c), but he cannot be compelled to take the new shares (d).

Application to the Court may be made, under s. 138, as to any question with respect to time of dissent (e) by summons in chambers.

The price of the dissentient shareholder's interest is to be determined by agreement, or, in case of dispute, by arbitration in the manner directed by s. 162, which incorporates the Companies Clauses Consolidation Act, 1845 (f), unless provision is made for arbitration by the articles of association, when the provisions of the articles must be complied with (g). The Court, on the application of the liquidators, has jurisdiction to order a commission for the examination of witnesses abroad (h).

No interest is payable on the amount of an award settling the price except from the date when payment of the amount awarded is demanded, and such interest is properly calculated at the rate of £4 per cent. (i). This purchase-money is to be paid before the company is dissolved, and is to be raised by the liquidators as determined by special resolution (k).

An action may be brought against the company by the

(a) *Union Bank of Kingston-upon-Hull*, 13 Ch. D. 808. See form of notice, *post*, p. 585.

(b) *London and Westminster Bread Co.*, 62 L. T. 224.

(c) *Higg's Case*, 13 W. R. 937; *Clinch v. Financial Corp.*, 4 Ch. 117.

(d) *Bank of Hindustan Ex p. Los*, 34 L. J. Ch. 609; *Higg's Case*, *supra*; *Martin's Case*, 2 H. & M. 669; *Empire Ass. Corp.*, 4 Eq. 341; *Ex p. Fox*, 6 Ch. 176.

(e) *Union Bank of Kingston-upon-Hull*, 13 Ch. D. 808, where

the application was by motion.

(f) 8 & 9 Vict. c. 16, ss. 128-134; *Re Anglo-Italian Bank and De Rosaz*, L. R. 2 Q. B. 452. As to costs of the arbitration, see *Imperial Merc. Credit Ass.*, 12 Eq. 504.

(g) *De Rosaz v. Anglo-Italian Bank*, L. R. 4 Q. B. 462.

(h) *Mysore West Gold Mining Co.*, 42 Ch. D. 535.

(i) *United States Cable Co.*, 48 L. J. Ch. 665.

(k) S. 161.

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If the dissentient shareholder declines the price offered by the liquidators for his shares, he is not entitled, whilst the arbitration on the subject is pending, but before any steps have been taken in it beyond naming the arbitrators, to inspect the books of the old company which have already been handed over to the new company, in order to see whether it would be advantageous to accept the offer (b).

When the matter comes before the arbitrators, the burden of proof is upon the liquidators to shew that the price offered is a fair one (c).

The only means of impeaching the sale or transfer is by an action, which may be brought on behalf of the dissentient shareholder and all other shareholders (d). But leave will not be given by the Court to a shareholder to commence an action in the name of the company to set aside an arrangement, if *intra vires*, though irregular (e). An action may be barred by delay (f). Members who have accepted shares in the new company may be estopped from repudiating them, although the sale is void (g).

It is usual in modern articles of association to provide that, on reconstruction, a dissentient member shall not have the rights given him by s. 161, but that he shall have the right to require the liquidator to sell the shares or other interests to which he is entitled under the scheme, and to pay him the proceeds. This is a very useful clause, and facilitates the reconstruction considerably. It is sometimes provided that, on reconstruction, the shareholders *shall* take the shares, &c., in the new company, but this is capable of working great hardship where the shares in the new company are under the scheme to be deemed to be only partly paid up.

What sales may be made.—A sale cannot be made to an

(a) *De Rosaz v. Anglo-Italian Bank*, 1. R. 4 Q. B. 462.

(b) *Glamorganshire Banking Co., Morgan's Case*, 28 Ch. D. 620.

(c) *Ib.*

(d) *Imperial Bank of China and Japan*, 1 Ch. 339; *International Life Ass. Soc.*, 20 L. T. 433 (petition to wind up ordered to stand over); *Clinch v. Financial Corp.*, 4 Ch. 177; *Bird v. Bird's Sewage Co.*, 9 Ch. 35. But see *City and*

County Investment Co., 13 Ch. D. 475. As to the duty of directors, and accepting commission on a sale, see *General Exchange Bank v. Horner*, 9 Eq. 480.

(e) *Ex p. Fox*, 6 Ch. 176. See *Hester & Co.*, 44 L. J. Ch. 757.

(f) See *Clinch v. Financial Corp.*, *supra*; *Hafod Hotel Co.*, 18 L. T. 144.

(g) *Bank of Hindustan, &c.*, 9 Ch. 1.

individual speculator (*a*), but a sale to an agent for a company to be formed is good (*b*). The purchasing company may be a foreign company or one not formed under the Act (*c*), or one formed for the purpose of taking over the business of the company being wound up (*d*). A sale has been sanctioned where there was an option to repurchase (*e*). A company incorporated by a charter or special Act of Parliament cannot delegate its powers or transfer its business unless authorized by its charter or Act (*f*).

If an **unregistered company** cannot by its deed of settlement sell or transfer its business, the object may be effected by registering under the Acts, passing a resolution to wind up voluntarily and taking steps under s. 161 (*g*).

A contract for sale of a company's undertaking made by directors, but *ultra vires*, may be supported under this section if within its terms (*h*).

The section applies to mutual insurance societies (*i*). The purchasing company may take a portion only of the assets and liabilities of the old company (*k*).

Distribution of proceeds of sale.—S. 161 only enables the general meeting to decide on the nature of the consideration to be accepted, and not on the mode of its distribution (*l*). The only proper mode in which such consideration can be divided is, under s. 133, among the members according to their rights and interests in the old company (*l*). Thus, where a company with preference shares and ordinary shares, the **preference shares conferring no priority as to capital**, is reconstructed, shares in the new company must be distributed *pro rata* amongst all the shareholders of the old company, for it is *ultra vires* to give preference shares in the new company to preference shareholders in the old company, and ordinary shares to ordinary shareholders in the old company (*m*).

A **fresh and original liability** cannot be imposed upon the shareholders in the company whose business is to be

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(*a*) *Bird v. Bird's Sewage Co., &c., Soc.*, 6 Ch. 614.
9 Ch. 358.

(*b*) *Hester & Co.*, 44 L. J. Ch. 117.
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(*c*) *Irrigation Co. of France, Ex &c., Soc.*, *supra*.

p. Fox, 6 Ch. 176.

(*d*) *Imperial Mercantile Credit Co.*, 13 Ch. D. 475; *Basye, &c., Mining Co.*, 40 L. T. 85.

(*e*) *Cambrian Mining Co.*, 48 L. T. 114.

(*f*) *Lindley* (5th ed.), 891-892.

(*g*) *Southall v. British Mutual, W. N.* (1893), p. 91.

(*h*) *Clinch v. Financial Corp.*, 4 Ch. 117.

(*i*) *Southall v. British Mutual, &c., Soc.*, *supra*.

(*k*) *City and County Investment Co.*, 13 Ch. D. 475; *Basye, &c., Mining Co.*, 40 L. T. 85.

(*l*) *Griffith v. Paget*, 5 Ch. D. 894.

(*m*) *Simpson v. Palace Theatre, W. N.* (1893), p. 91.

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transferred without their consent, and any such arrangement will be *ultra vires* and invalid (a). The shares in the new company are purchased by the assets of the old company at the time of the liquidation, not assets to be got by subsequent calls (b).

But a sale may be made for shares in the new company not fully paid up (c), or for preference or deferred shares (d).

Where under the terms of the scheme the shares in the new company are payable by instalments, but before such instalments become due the new company is wound up, the liquidator of the new company can make an immediate call for the whole amount of the shares; the contract as to instalments is determined by the winding-up (e).

The shares should generally be allotted to the shareholders directly, and not to the liquidator, as it may lead to liability (f). And it may be stipulated that the shares in the purchasing company, which are to be given as a consideration for the transfer, shall be distributed directly among the shareholders of the transferring company, and not given to the liquidator as part of the assets of the winding-up (g). But, where only the shares of the new company will remain to satisfy the dissentients' claims, the liquidators may be put upon terms not to part with the assets until payment to the dissentient shareholders of the value of their shares (h). The same rules would equally apply to the distribution of any proceeds of sale. The liquidator may, if he sees fit, protect himself by an application to the Court in reference to the distribution of the shares.

(a) *Clinch v. Financial Corp.*, 4 Ch. 117; *Imperial Bank of China v. Bank of Hindustan*, 6 Eq. 91. As to shareholders incurring fresh liability, see *Ex p. Poole*, 8 Ch. 702. See also *Bank of Hindustan v. Alison*, L. R. 6 C. P. 222, and *City and County Investment Co.*, 13 Ch. D. 475; *Bank of South Australia* (2) [1895], 1 Ch. 578.

(b) *Clinch v. Financial Corp.*, per Wood, V.C., 5 Eq., at p. 476.

(c) *Postlethwaite v. Port Phillip Gold Co.*, 43 Ch. D. 452; *City and County Investment Co.*, *supra*.

(d) *Imperial Mercantile Credit Ass.*, 12 Eq. 504; *Hester & Co.*, 44 L. J. Ch. 757.

(e) *Cordova Union Gold Co.* [1891], 2 Ch. 580.

(f) *Dyett's Case*, 43 L. T. 85.

(g) *City and County Investment Co.*, 13 Ch. D. 475; *Basye, &c., Mining Co.*, 43 L. T. 85; *Postlethwaite v. Port Phillip Gold Co.*, 43 Ch. D. 452. As to unallotted shares, and claiming to prove in the subsequent winding-up of the purchasing company, see *Mercantile and Exchange Bank, Ex p. London Bank of Scotland*, 12 Eq. 268. As to the personal liability of the parties to the agreement for sale on shares in their hands, where there has been an allotment of unpaid shares in the new company, see *Basye, &c., Mining Co.*, 43 L. T. 85.

(h) *Hester & Co.*, 44 L. J. Ch. 757. See *infra*.

A scheme will not be vitiated by the insertion of a limit of time by the liquidator of the old company within which the option to take shares in the new company is to be exercised, provided the limit is such as to leave the option available for a reasonable time (*a*). Even if the limit of time is left to be determined by the directors of the new company, it is doubtful whether that would be treated as a serious objection to the scheme (*b*). If a shareholder does not apply for the new shares within the limit of time fixed by the resolutions, he cannot, as a rule, obtain allotment of the shares or damages (*c*). The distribution contemplated by s. 161 must take place before the close of the winding-up in the course of which the sale is made.

Where the company has a lien on shares, it will also have a lien on the money representing the shares on a sale of the company's assets (*d*).

Where the winding-up is compulsory or under supervision.—S. 161 only applies to a purely voluntary winding-up, but in a winding-up under supervision of or by the Court a sale of the company's property for shares and a reconstruction can be effected under s. 95 (*e*).

Where the winding-up is not purely voluntary, a special resolution is not necessary, and the dissentient shareholders' rights under s. 161 do not attach, but in such cases the Court has a discretion, and can give similar rights and impose similar terms (*f*).

Winding-up order within a year.—The liability to have a reconstruction avoided by reason of a compulsory or supervision order being obtained within twelve months may render it expedient to apply forthwith for a supervision order (*g*), in order to be able to apply immediately for the sanction of the Court. Such sanction cannot be given before making a supervision or compulsory order, but may be given at the same time (*h*).

(*a*) *Postlethwaite v. Port Phillip Gold Co.*, 43 Ch. D. 452.

(*b*) See *Nicholl v. Eberhardt Co.*, 59 L. J. Ch. 103.

(*c*) *Weston v. New Guston Co.*, 62 L. T. 275; *South Australian Petroleum Fields, Ltd.*, W. N. (1894) 189. See also *Zuccani v. Nacupai Gold Co.*, 61 L. T. 176, as to shareholder lying by and losing right to specific performance of an agreement with the new company

(*d*) *General Exchange Bank, Ex p. Lewis*, 6 Ch. 818.

(*e*) *Imperial Mercantile Credit Ass.*, 12 Eq. 504; *Agra and Masterman's Bank*, *ib.* 509; *Albert Life Assurance Co.*, 6 Ch. 381; *General Exchange Bank*, 15 W. R. 447.

(*f*) *Cambrian Mining Co.*, 48 L. T. 114. See *Bank of South Australia* [1895], 2 Ch. 578.

(*g*) *New Flagstaff Co.*, W. N. (1889), p. 123.

(*h*) *Callao Bis. Co.*, 42 Ch. D. 169.

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In giving such sanction, the Court will have regard to the wishes of a majority of the shareholders and creditors deliberately expressed upon full information fairly afforded to them, as against the opposition of a dissentient minority (*a*). The sanction will be given notwithstanding suggestions of possible liabilities to the dissentients, if the scheme is approved by the majority, and is clearly advantageous unless it appears that the liabilities will in fact ensue (*b*).

The principles which are applied to the case of dissentient shareholders are applied to dissentient creditors (*c*).

Reconstruction independently of s. 161.—It is not competent for a company to *alter* its articles of association so as to deprive dissentient members of their rights under s. 161 (*d*). But the memorandum of association may confer a power for the company to sell its undertaking to another company, in consideration of shares, and such a power has the effect of excluding the operation of s. 161, notwithstanding that at the time of the execution of the contract for sale it is in contemplation to wind up the selling company voluntarily (*e*). In such a case the company may call up all their uncalled capital and include it in the sale (*f*). But the whole consideration given by the purchasing company must come into the hands or under the control of the vendor company (*g*). It is possible also to restrict the rights of dissentients by the articles of association, and the articles are frequently now framed so as to enable the liquidator to sell shares which dissentient members are entitled to take up but do not take up, and to pay the proceeds of sale to the dissentients.

Independently of s. 161, the liquidator in voluntary winding-up has power, under ss. 95 and 133 (sub-s. 7), to sell the assets to another company, and he may agree to make calls for the purpose of paying the debts of the company, and to pay such calls to the purchasers if the purchasers undertake the debts (*h*).

(*a*) *Imperial Mercantile Credit Association*, 12 Eq. 504, *Ex p. Fox*, 6 Ch. 176.

(*b*) *Marine Investment Co., Ex p. Poole*, 8 Ch. 702.

(*c*) *Tunis Railway*, 10 Ch. D. 270 n.; S. C. on appeal, 31 L. T. 264.

(*d*) *Ex p. Fox*, 6 Ch. 176.

(*e*) *Cotton v. Imperial and*

Foreign Agency, &c., Corpn. [1892], 3 Ch. 454; *North British Water Co.*, 1 Manson 132.

(*f*) *New Zealand Gold, &c., Co. v. Peacock* [1894], 1 Q. B. 622.

(*g*) *Holst v. Sydney, &c., Coal Co.*, 69 L. T. 132.

(*h*) *Bank of South Australia* (2) [1895], 1 Ch. 578.

Amalgamation.—By amalgamation of companies under the Companies Acts is meant the transfer of all or part of the assets of one or more company or companies to another company (*a*). The transferee company may either be an existing company formed for other purposes, or one formed for the special purpose of taking a transfer of the assets of the amalgamating companies.

Reasons for amalgamation.—The chief reason is to effect saving in expenses of management, directors' fees, &c., and to prevent competition. Also, if the company is flourishing, there is a more ready market if the number of shares is increased.

How effected.—(1.) **By special Act of Parliament.** This is unusual, and not within the scope of this work.

(2.) Under express **power conferred by the memorandum of association of a company.**

The precise effect of a clause in the memorandum giving power to "amalgamate" is not clear. Probably it would authorize the company either (*a*.) to sell its own undertaking to another company in consideration of shares, or (*b*.) to buy the undertaking of another company, paying therefor in shares (*b*). As a rule, the memorandum now authorizes expressly a sale or purchase of the undertaking. As to the effect of such a clause on dissentients by excluding the provisions of s. 161, see *ante*, p. 442.

(3.) **Under s. 161 of the 1862 Act.** This is the usual method. If two existing companies wish to amalgamate, and one has power under its constitution to purchase the undertaking of the other, and also has sufficient unissued shares to answer the requirements of the amalgamation, the one company resolves to wind up and to sell its undertaking to the other in consideration of shares. It is, in fact, a simple reconstruction.

If neither company has power to purchase the undertaking of the other, it is necessary to form a new company to purchase the undertakings of both companies. In this case *both* the old companies resolve upon winding-up, and *both* sell their assets to the new company in consideration of shares. It is, in fact, a double reconstruction.

(*a*) As to the distinction between "reconstruction" and "amalgamation," see *Hooper v. Western Counties and Telephone Co.*, 41 W. R. 84.

(*b*) *Era Case*, 1 De G. J. & S.

29; *Pullbrook v. New Civil Service Co.*, 26 W. R. 11; *Dougan's Case*, 8 Ch. 545; *Wynne's Case*, *ib.* 1007; *Re Financial Corp.*, 28 W. R. 760; *North British Water Co.*, 1 Mansp 132.

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It is, therefore, needless here to explain in detail this mode of amalgamating; the reader is referred to the earlier section of this chapter, which deals with reconstruction at length. There are, however, a few points which require further notice.

Unregistered company.—If the company is not registered, *e.g.* an unregistered mutual life assurance company (*a*), it must first register under the Act and then proceed in the usual way.

If the purchasing company has power to purchase only with the sanction of a resolution of the company, such resolution should be passed before the vendor company resolves upon winding-up. Difficulties, requiring reconstruction or application to the Court to stay the liquidation to remove them, would arise if the vendor company resolved to wind up, and subsequently it turned out that the shareholders in the purchasing company refused to sanction the arrangement. So, too, a resolution may be required by the purchasing company if they have to create new shares in order to be able to carry out the amalgamation. This also should be passed before the vendor company resolves to wind up.

Directors.—If it is desired that the directors of the selling company should be on the board of the purchasing company, due provision must be made for that purpose. If the purchasing company is a new company, such provision will be contained in the articles; if it is an existing company, the provisions of its articles must be complied with; and if the power of appointing directors is, as is usually the case, vested in a general meeting of the company, the appointment of directors must be made by such a meeting.

A provision in the agreement for amalgamation, that part of the purchase-money shall be paid to the directors of the selling company by way of bonus, does not invalidate the amalgamation (*b*). There must not, of course, be any concealment relating to the bonus.

Name of company.—As to using same name as selling company, see *ante*, p. 436. If the purchasing company desires to change its name, a special resolution must be passed for the purpose, under s. 13 of the 1862 Act, and the sanction of the Board of Trade obtained. The change

(*a*) *Southall v. British Mutual Life Assce. Co.*, 11 Eq. 65. (*b*) *Ib.*, 6 Ch. 614.

is not complete until a new certificate of incorporation is issued (a). **Part IV.**

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Failure of purchasing company to indemnify against debts.—Where the purchasing company, which has purchased subject to liabilities of the vendor company, fails to satisfy such liabilities, and is wound up, the selling company is not entitled to have any assets back, although they have not been legally transferred to the purchasing company (b).

As to the effect of clauses in the articles of the selling company on a proposed sale or transfer of its business, see the cases below (c).

Life assurance companies.—Life insurance companies cannot now amalgamate or transfer their business without the assent of the High Court of Justice, to be obtained by petition in the Chancery Division (d).

When a petition is presented by a life assurance company under s. 14 of the Life Assurance Companies Act, 1870, on the confirmation by the Court of a conditional agreement to sell and transfer its business to another company, the notices required by that section to be given to each policy-holder of the company must be given before the hearing of the petition, and the Court will not make an order on the petition, subject to the production to the registrar of consents from any policy-holders to whom such notices shall not have been given (e).

One-tenth of the policy-holders in any insurance company can stop amalgamation or transfer of life insurance business by or to that company (f). Annuitants under a deed in which the company covenants to guarantee the payment of certain annuities, are "policy-holders" within the definition of s. 2 (g).

S. 14 of the Life Assurance Companies Act, 1870, confers no power on an assurance company to transfer its business to another company. If a company has power to transfer, this section only contemplates a transfer of the whole of the assurance business as a going concern without any reduction in the policies, or any fresh contracts with the policy-holders (g).

(a) *Shackleford v. Dangerfield*, L. R. 3 C. P. 407.

(b) *Albert Life Assurance Co.*, 11 Eq. 164.

(c) *Empire Ass. Corp., Ex p. Bagshaw*, 4 Eq. 341; *Irrigation Co. of France, Ex p. Fox*, 6 Ch. 176; *Ex p. Los*, 34 L. J. Ch. 609.

(d) Life Assurance Companies Act, 1870, ss. 14, 15, *post*, Appendix. See Forms, *post*, p. 594.

(e) *Briton Life Association*, 35 W. R. 803.

(f) 33 & 34 Vict. c. 61, s. 14.

(g) *In re Sovereign Life Assce. Co.*, 42 Ch. D. 540. It seems that

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If a life assurance company having no power to transfer its business, but having power to alter its articles, does so, so as to take power to transfer its business, a transfer can then be made (a).

Stannaries.—As to the amalgamation of companies working mines in the Stannaries, see s. 27 of the Stannaries Act, 1887 (b).

Arrangements.—Previously to the passing of the Joint Stock Companies Arrangement Act, 1870 (which is set out at length in the Appendix), the only provisions enabling a majority of *creditors* to bind the minority was contained in s. 136 of the 1862 Act, which applies only in voluntary winding-up; thus there was no means of carrying out a compromise except with the consent of *all* the creditors, where the winding-up was by or under the supervision of the Court (c).

The provisions of s. 136 of the 1862 Act are very similar to, but are not quite the same as those of, the second section of the 1870 Act. As to s. 136, and as to a liquidator's power of compromising with creditors, see Part I., Chap. X., *ante*, p. 192.

S. 2 of the 1870 Act provides (1.) that where an arrangement is proposed between a company in liquidation either voluntarily or by or under the supervision of the Court, and the creditors or a class of the creditors of such company, the Court may, on the application of a creditor or the liquidator, order a meeting of the creditors or class of creditors to be held.

(2.) That if a majority of three-fourths in value present by person or proxy agree to an arrangement, such arrangement shall, if sanctioned by the Court, be binding on *all* the creditors or class of creditors, and also on the liquidator and contributories of the company.

When an arrangement is desirable.—It frequently happens that a forced realization of the assets of a company would be ruinous to both creditors and contributories, and under these circumstances the above power of binding a minority of the creditors to an arrangement for avoiding the necessity of a forced sale is most beneficial. Such arrangements may take the form of binding creditors to accept

the dissent of one policy-holder would invalidate the scheme proposed in this case.

(a) *Argus Co.*, 39 Ch. D. 571.

(b) 50 & 51 Vict. c. 43, s. 27,

post, Appendix.

(c) See *Alabama, &c., Railway Co.* [1891], 1 Ch. 213, as to the Act generally.

a composition, or of selling the assets to some one who will pay them a composition, the winding-up of the company being continued in each case; or binding creditors to accept from the company, in payment of their debts, debentures or shares in the company which continues its business. Sometimes the arrangement provides for floating a new company, and for the creditors to take preference shares or debentures, and the shareholders to take deferred shares, and then for the new company to carry on the old business.

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Practice.—The liquidator (or a creditor) prepares his plan for arranging with the creditors, and as a rule he sounds the views of the largest creditors, with the object of ascertaining whether they are disposed to concur, before he takes any steps under the Act.

If the prospect of carrying a scheme through seems favourable, the liquidator (or a creditor) applies to the Court by summons or motion for leave to convene the requisite meetings. The registrar gives directions how the meetings should be convened. All proceedings and notices should be entitled in the matter of the Companies Acts, 1862 to 1890; in the matter of the Joint Stock Companies Arrangement Act, 1870, and in the matter of the company (*a*).

The order for holding meetings may give all necessary directions as to advertising proxies, and direct who is to take the chair. Where the bulk of the creditors are abroad, the Court may order that the creditors abroad may vote by giving proxies to designated persons to vote for or against the scheme, provided that such proxies are deposited at some named place abroad three days before the meeting, and that the particulars of such proxies be communicated by telegram to the liquidator in this country; and proxies so given are valid (*b*). Where there are several liquidations in different countries, it may be that only the creditors in each country are entitled to be heard in that country (*c*).

An order for meetings having been obtained, the liquidator (or a creditor) calls the meetings by notice and advertisement (*d*) as directed by the order. The notice

(*a*) *Darleston Coal & Iron Co.*, W. N. (1877), p. 139.

(*b*) *English, Scottish, &c., Bank* [1893], 3 Ch. 385; see same case as to stamps on proxies, and as to name of proxy being inserted in

the proxy papers. See form of order at end of report.

(*c*) *Queensland National Bank*, W. N. (1893) 128.

(*d*) Form of notice, p. 597. Form of advertisement, p. 597.

Part IV. to the persons interested should state clearly what the arrangement is to be (*a*). A form of proxy should accompany the notice (*b*).

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The scheme of arrangement proposed should be formulated, and a copy of the scheme is sent to each creditor with the notice of meeting. A copy is also deposited at the registered office of the company and at the office of the company's solicitors for inspection by creditors.

The scheme is submitted to the meetings for approval, and is generally approved "with such modifications as the Court may sanction." If the assets are to be sold to a new company, the liquidator and the new company will then enter into the agreement of sale (*c*). If the assets are to be sold to an individual, it is better to have an agreement with him for sale (*d*), subject to the sanction of the Court, so that he may be bound if the scheme be approved.

As to meetings.—The sanction of three-fourths in value of the creditors *present* in person or by proxy at the meeting is sufficient; those who do not attend are not taken into account (*e*). The votes of shareholders who are also creditors are to be taken into account (*f*).

The necessary resolutions having been passed, the liquidator or a creditor presents a petition (*g*) for an order sanctioning the arrangement. If a creditor is petitioner, the company and the liquidator should be respondents, and be served.

In exercising the power of sanctioning a scheme the Court will not only ascertain that all the statutory conditions have been complied with, but will also consider whether the class of creditors summoned to the meeting was fairly represented by those who attended, and whether the statutory majority who approved were acting *bonâ fide*, or were seeking to promote interests adverse to those of the class whom they professed to represent, and generally whether the arrangement is such as a man of business would reasonably approve (*h*).

A scheme of arrangement sanctioned by the Court is

(*a*) *Dominion of Canada Timber Co.*, 55 L. T. 347.

(*b*) Forms, p. 597.

(*c*) Form, p. 586.

(*d*) Forms, p. 589.

(*e*) *Bessemer Steel and Ordnance Co.*, 1 Ch. D. 251; *Alabama, &c., Railway Co.* [1891], 1 Ch. 213.

(*f*) *Madras Irrigation Co.*, W.N.

(1881), p. 172; *Alabama, &c., Railway Co.*, *supra*.

(*g*) Form, p. 599.

(*h*) *Alabama, &c., Railway Co.*, *supra*; *Wedgwood Coal Co.*, 6 Ch. D. 627; *English, Scottish, &c., Bank* [1893], 3 Ch. 385; *Buenos Ayres Water Co.*, 66 L. T. 408.

an alternative mode of liquidation which the law allows the creditors to substitute for the winding-up, and by operation of law the scheme becomes effective to relieve the company and its contributories from further liability than that imposed by the scheme; their discharge being effected by the stay of action, under s. 87, or order to stay actions under s. 138 of the 1862 Act, coupled with a stay of the winding-up proceedings (a).

It is therefore unnecessary in a scheme to reserve the rights of sureties for the companies' debts, or to insert in the order sanctioning it—at all events in a winding-up by order or under the supervision of the Court—any express words staying proceedings by creditors, or discharging contributories from further liability than that imposed by the scheme (b).

Guarantors or insurers of the payment of the company's debts are liable, notwithstanding a scheme of arrangement, to a creditor of the company who did not assent to the scheme, but was bound by it under the statute; but on payment the guarantors or insurers are entitled to be subrogated to the rights of the creditor under the scheme (c).

Where a scheme contemplates the formation of a new company, and shareholders in the old company are allowed to take shares, not fully paid, in the new company in respect of shares as to which they are liable in the winding-up, the Court may, as a condition of sanctioning the scheme, require the insertion, in the memorandum of association of the new company, of a clause preventing them from escaping liability by transferring their new shares (d). Vaughan Williams, J., requires that the scheme must provide that the new company should undertake to obey the order of the Court as to any proceedings which the Court might think it right to have taken against officers of the old company; his lordship's experience having satisfied him that, unless the scheme contained some positive provisions, not only that proceedings might be taken, but also that a portion of the assets transferred to the new company might be applied in payment of the costs of such proceedings, if there were any delinquent directors of the old company, they might escape altogether. In future he will not sanction any scheme which

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(a) *London Chartered Bank of Australia* [1893], 3 Ch. 540.

(b) *Ib.*

(c) *Dane v. Mortgage Insurance*

Corpn. [1894], 1 Q. B. 54.

(d) *London Chartered Bank of Australia* [1893], 3 Ch. 540.

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does not contain such clauses. These remarks, of course, do not apply when a company is perfectly solvent, and what is being done is a mere operation of selling to a new company (a).

Although s. 2 of the Act of 1870 does not require that meetings of **contributories** should be held, it will always be advisable that this should be done, and their views ascertained (b).

Classes of creditors.—Where there are different classes of creditors, a meeting of each class separately should be called (c).

If a scheme of arrangement has received the sanction of the majority of contributories and creditors required by the Acts, and also the sanction of the Court, it is not material in what order these sanctions have been obtained (d).

Debenture-holders are “creditors” within the above section (c). The Court has jurisdiction to deprive secured creditors of their security, wholly or in part (f). The holders of debentures passing by delivery are not entitled to vote unless they produce their debentures at or before the meeting (g).

The act applies to every conceivable class of creditors (h). Any person having a pecuniary claim against a company, whether actual or contingent, is bound by the Act (i). For instance, a lessee who has assigned to a company, and taken a covenant from the company to indemnify him against liability under the lease, is bound (i). Apparently he could call on the new company, which under the scheme took over all the assets of the old company, to indemnify him from time to time as he should be called on to pay under the lease (k).

(a) See W. N. (1894), p. 156. See form of clause, *post*, p. 596.

(b) See *Dynevor, &c., Collieries Co.*, 11 Ch. D. 605; *Slater v. Darlaston Steel and Iron Co.*, W.N. (1887) 139; *Akankoo Mining Co.*, 1 Megone, 43.

(c) *Sovereign Life Ass. Co. v. Dodd* [1892], 2 Q. B. 573, where it was held that separate meetings of matured and non-matured policy-holders should be held.

(d) *Dynevor, &c., Collieries Co.*, *supra*; which see also as to modifications of the scheme.

(e) *Alabama, &c., Ry. Co.* [1891], 1 Ch. 213; *Empire Mining Co.*, 44 Ch. D. 402; *Dynevor, &c., Collieries Co.*, *supra*.

(f) *Alabama, New Orleans, &c., Ry. Co.*, *supra*.

(g) *Wedgwood Coal, &c., Co.*, *supra*.

(h) *Per Bowen, L.J., Alabama, &c., Ry. Co.*, *supra*.

(i) *Craig's Claim* [1895], 1 Ch. 267.

(k) *Ib.*; *New Oriental Bank Corpn.* [1895], 1 Ch. 753.

The Court will not, as a general rule, sanction an arrangement if it would prejudice a creditor whose rights would have been preferential if the petition and winding-up were carried on (a).

Creditors who might have left the matter in the hands of the liquidator will not be allowed the costs of appearing (b).

As a creditor can apply for the sanction of the Court under s. 2 of the Act of 1870, *quære* whether he can compel the liquidator to consent to a compromise (c).

When a scheme of arrangement has been sanctioned, it is binding on the creditors, contributories, and liquidators, and cannot be set aside; the only remedy is to appeal (d). A creditor who has not opposed the scheme at the meeting of creditors, nor appeared before the judge when his sanction was applied for, nor obtained leave to appeal, has no *locus standi* to appeal (e).

The provisions of the Act of 1870 are frequently applied to reconstruction schemes (f), arrangements for a composition or time, &c., with creditors, or for a sale of the company's assets. Where part of the arrangement is that the winding-up shall be stayed, see s. 89; where it includes a sale of the assets, s. 95 (g). S. 161, which applies to a voluntary winding-up, requires two meetings of the members, and the dissentients have certain rights, but under s. 95 one meeting of contributories only will be required by the Court (h).

(a) *Richards & Co.*, 11 Ch. D., at p. 679, *per* Fry, J. See this case as to where an execution creditor does not issue execution on representations of the company.

(b) *Albert Life Ass. Co.*, 6 Ch., at p. 387.

(c) See *Hankey's Case*, 26 L. T. 358; *East of England Banking Co.*, *Pearson's Case*, 7 Ch. 309.

(d) *Nicholl v. Eberhardt Co.*, 59 L. J. Ch. 103.

(e) *Securities Insurance Co.* [1894], 2 Ch. 410.

(f) See the cases *supra*, and the following cases for instances of schemes which have been sanctioned: *Western of Canada Oil Co.*, W. N. 1874, p. 148; *Tunis Ry. Co.*, 10 Ch. D. 270, n.; app. W. N. 1874, p. 165.

(g) So also in a voluntary winding-up, see s. 138; and in a winding-up under supervision, s. 151.

(h) *Cambrian Mining Co.*, 48 L. T. 114.

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ALTERATIONS of the memorandum of association are permitted within certain limits and subject to certain conditions. Some alterations may be made without the aid of the court, while for others such aid is required.

Part V.

ALTERATIONS OF THE MEMORANDUM OF ASSOCIATION.

SECTION I.

ALTERATIONS WITHOUT THE AID OF THE COURT.

Change of name.—By s. 13 of the Act of 1862, the company may by special resolution change its name with the approval of the Board of Trade. A new certificate of incorporation is then issued, and until this is done the change is not complete (*a*).

WITHOUT THE AID OF THE COURT.

Capital.—The capital of companies limited by shares can be altered in the following particulars, if the company is empowered to make the alteration by its regulations as originally framed or altered by special resolution.

By s. 12 of the Act of 1862—

(1.) The capital may be increased by the issue of new shares.

(2.) The capital may be consolidated or divided into shares of larger amount.

(3.) Paid-up shares may be converted into stock.

By s. 8 of the Act of 1867—

(4.) By special resolution, the liability of directors may be made unlimited.

By s. 21 of that Act—

(5.) By special resolution, existing shares may be divided into shares of smaller amount than is fixed by the memorandum.

(*a*) *Shackleford v. Dangerfield*, L. R. 3 C. P. 407.

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This alteration must be shown in every copy of the memorandum issued after the resolution.

By s. 5 of the Act of 1877—

(6.) Any shares not taken or agreed to be taken may be cancelled.

To the extent above stated only can the memorandum of association be altered without the aid of the Court.

SECTION II.**ALTERATIONS WITH THE AID OF THE COURT.**

1. Reduction of capital under the Acts of 1867 and 1877.

2. Extension of objects under the Memorandum of Association Act, 1890.

Jurisdiction under these Acts may be exercised by the judges having jurisdiction in winding-up (a), or by the judges of the Chancery Division to whom chambers are attached (b).

1. REDUCTION OF CAPITAL.

Capital whether called, uncalled, lost, unrepresented by available assets, or in excess of the wants of the company, may be cancelled in the manner provided by the Act of 1867, ss. 9–20, and the Act of 1877, ss. 3, 4.

Reduction of capital cannot be effected legally in any way other than by a special resolution confirmed by the Court. Payment of dividends out of capital or issue of shares at a discount involves a return of capital, and is illegal even if sanctioned by the memorandum of association (c). Nor in the cases of issue of shares at a discount is the matter made better by the fact that the shares were issued under an agreement filed under s. 25 of the Act of 1867 (d). But shares can be issued under such a contract for services rendered into the value of which the Court will not inquire (e). But the shares will not be taken as fully paid if the contract shews that the parties valued the consideration at less than the nominal value of the shares (f).

The question has often arisen how far payment of

(a) *Ocean Queen S.S. Co.* [1893], 2 Ch. 666. (Reduction.) *Mining Shares Co.*, *ib.* 660. (Extension.)

(b) *Islington and General Electric Supply*, 92 W. N. 81.

(c) *Trevor v. Whitworth*, 12 App. Ca. 409.

(d) *Ooregum Co. v. Roper* [1892], A. C. 125; *Eddystone Marine Co.* [1893], 3 Ch. 9.

(e) *Peel's Case*, 5 Ch. 11.

(f) *Almada and Tirito Co.*, 38 Ch. D. 415; and see *ante*, Part I. Chap. VIII., p. 132.

dividends without providing for depreciation is a reduction of capital.

The discussion of this question is not within the scope of this work, but the rule as laid down by the last cases appears to be that if a company has any assets which are not capital within the meaning of the Companies Acts (*i.e.* mentioned in the memorandum of association), there is no law which prohibits the division of such assets among shareholders (*a*). Thus in an investment company, the total of whose share and debenture capital invested showed a loss of £250,000, the income from investments exceeded outgoings; held the excess might be applied as dividend (*b*). Depreciation in the leases and good will of a trading company need not be made good before a dividend can be paid (*c*). And a limited company may surrender part of a particular investment with a view to improving the remainder. This is not reducing the capital within the meaning of the Acts (*d*).

It was formerly considered that in proceedings under the Act of 1867, one class of shares could not be reduced unless a corresponding reduction was made in all other classes of shares, but it is now decided that the Court can confirm any kind of reduction (*e*); *e.g.* reduce one class of shares only or sanction the surrender to the company of the shares of a single member.

Practice.—Reduction under the Act of 1867 is generally applied for where the company desires to reduce the liability on shares, as by reducing the nominal amount of the shares to the amount actually paid up, or by returning capital not required and reducing the nominal value of the shares by the amounts paid back, or by cancelling capital lost, or shares which have been surrendered.

If the articles do not contain a power to reduce capital, a special resolution must be passed inserting such a power.

When the articles are amended, a special resolution must be passed sanctioning the required reduction.

Amending and sanctioning resolutions cannot be passed

(*a*) *Verner v. General, &c., Co.* [1894], 2 Ch. 239.

(*b*) *Ib.*

(*c*) *Wilmer v. McNamara & Co.* [1895], 2 Ch. 245. Cf. *Lee v. Neuchatel Co.*, 41 Ch. D. 1.

(*d*) *Thomson v. Trustees Executors, &c., Corpn.* [1895], 2 Ch. 455.

(*e*) *British and American Co.*

v. Couper [1894], A. C. 399; *Agricultural Hotel Co.* [1891], 1 Ch. 396; *Pinkney and Son's Steamship Co.* [1892], 3 Ch. 125; *Denver Hotel Co.* [1893], 1 Ch. 495; *Floating Dock Co. of St. Thomas* [1895], 1 Ch. 691; *London and New York Investment Corpn.* [1895], 2 Ch. 860.

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See p. 402.

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When the resolutions are passed, the next step will depend on the nature of the reduction.

1. If it does not involve a diminution of any liability in respect of unpaid capital, or the payment to a shareholder of any paid-up capital, s. 4 of the Act of 1877 provides that (a.) creditors shall not be required to consent or entitled to object to the reduction unless the Court otherwise directs; (b.) it shall not be necessary before the presentation of the petition to add, and the Court may dispense altogether with the words "and reduced" required by s. 10 of the Act of 1867.

The Court almost always requires an advertisement of the day for hearing the petition (b). It is seldom worth while to apply for leave not to use the words "and reduced" until the hearing. If the leave is important, it should be applied for on the summons for directions. This summons should be issued as soon as the petition is presented, asking the Court (1.) to fix a day for the hearing, (2.) to give directions for advertisement of the petition, and (3.) to dispense with the certificate of creditors. Evidence shewing the nature of the reduction, the newspapers circulating in places where the company carries on business, and who the known creditors are, should be forthcoming on the hearing of the summons. On the return the Court fixes a day for hearing, directs advertisements, and generally dispenses with the certificate of creditors.

The petition should be supported by the evidence of the chairman or secretary of the company, shewing why the reduction is required, and by evidence proving a copy of the memorandum and articles, the sending of the notices convening the meetings and the passing of the special resolutions (c).

The order made must be advertised (d), and the Court will direct in what newspapers, usually naming those in which the petition was advertised, but sometimes requiring advertisements only in the *Gazette*. A copy of the order and minute must be registered with the registrar, whose certificate is conclusive that the requirements of the Act have been complied with.

(a) *John Crossley & Sons*, W. N. (1892) 55.

(b) *Tumbracherry Co.*, 29 Ch. D. 683.

(c) S. 15, Act of 1867.

(d) *Omnium Investment Co.* [1895], 2 Ch. 127.

When lost capital is cancelled, the loss falls entirely on the ordinary shares in the company if there be any preference shares having priority as to capital (*a*); or where the articles provide that founders' shares shall bear in the first instance losses of capital, it falls on the founders' shares (*b*). If the priority is confined to dividend, the shares should be reduced *pari passu* (*c*). The company may, however, in any case throw the loss entirely on the ordinary shares, and the Court may confirm the reduction, but it will be very reluctant to do so where the effect would be inequitable (*d*).

The Court has confirmed a reduction caused by a vendor surrendering to the company vendor's fully paid shares (*e*), and a reduction caused by the purchase by the company of its own shares.

Where it is proposed to cancel lost capital, the company should be satisfied that the capital to be cancelled has been properly paid up or credited as paid up. Where shares are issued as fully paid under a contract which has not been registered, the register must be rectified, and if necessary the petition must stand over to enable this to be done (*f*). Capital properly expended in preliminary expenses cannot be treated as lost (*g*).

II. Where the reduction does involve a reduction of liability or a return of paid-up capital, the words "and reduced" must be added to the name of the company (*h*). The procedure will be found in the order of March, 1868 (*i*).

The Court cannot dispense with the settling of the list of creditors required by s. 13 of the Act of 1867, even though there be evidence that the company has no debts unsatisfied (*k*).

By s. 11 of the Act of 1867 the Court must be satisfied, before making the order, that the consent of every creditor has been obtained, or that his debt has been discharged,

(*a*) *Floating Dock Co. of St. Thomas* [1895], 1 Ch. 691.

(*b*) *London and New York Investment Co.* [1895], 2 Ch. 860.

(*c*) *Bannatyne v. Direct Spanish Cable*, 34 Ch. D. 287; *Direct Spanish Cable*, *ib.* 307; *Barrow Hematite*, 39 Ch. D. 582; *American Pastoral Co.*, 90 W. N. 62.

(*d*) *Quebrada Land Co.*, 40 Ch. D. 363; *British and American*

Corp. v. Couper [1894], A. C. 399.

(*e*) *Re Vivian*, 86 W. N. 32.

(*f*) *Nottingham, &c., Co.*, 4 T. L. R. 429; *Eastern, &c., Co.*, 68 R. T. 312.

(*g*) *Abstainers, &c., Insurance Co.* [1891], 2 Ch. 124.

(*h*) Act of 1867, s. 10.

(*i*) *Post*, Appendix.

(*k*) *Lamson Store Service Co.* [1895], 2 Ch. 726.

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or secured; creditors who do not dissent will not be deemed to assent (a).

A return of capital, on condition that it may be again called up, must be sanctioned by the Court (b), and proceedings under the Act of 1867 must be taken. S. 4 of the Act of 1877 does not apply.

The use of the words "and reduced" is generally continued for a month from the date of the order.

Minutes.—S. 15 of the Act of 1867 requires production to the registrar of Joint Stock Companies of a copy of the order confirming the reduction, and of a minute approved by the Court, shewing with respect to the capital of the company as altered by the order, (1.) the amount of the capital, (2.) the number of shares in which it is to be divided, and (3.) the amount of each share; and s. 4 of the Act of 1877 requires that the minute shall also shew (4.) the amount (if any), at the date of the registration of the minute, proposed to be deemed to have been paid up on each share.

The following will be found a convenient form of minute (c):—

"The capital of the _____ Company, limited [an reduced], is £70,000, divided into 10,000 shares of £7 each instead of the original capital of _____ of £ _____ each. At the time of the registration of this minute the sum of £ _____ has been and is to be deemed paid up on each of the said shares."

Where all the shares have been issued, and the same amount has been paid up on each share, the above minute can be used. If, however, (a.) all shares have not been issued, or (b.) different amounts have been paid up on the shares, the minute must be altered by stating in case (a.) the total number of shares issued, and the amount per share paid up, and in case (b.) the total number of each class of shares, and the amount paid up per share on each class.

In some cases it may be convenient, though it does not appear to be necessary, to shew the denoting numbers of the shares; e.g. where numerous shares have been issued

(a) *Patent Ventilating Co.*, 12 Ch. D. 254; *Credit Foncier*, 11 Eq. 356, not followed.

(b) *Fore St. Warehouse Co.*, 59 L. T. 214; *Trevor v. Whit-*

worth, 12 App. Ca. 409.

(c) Adopted by *Kay, J.*, *West Cumberland Co.*, 1888, W. N. 54. See *Solway S.S. Co.*, 61 L. T. 659.

and there are numerous differences in the amounts paid up (a).

An office copy of the order and minutes should be left with the Registrar of Joint Stock Companies, who will give his certificate of registration. The minute when registered is deemed to be substituted for the corresponding part of the memorandum of association, which is to be taken as altered accordingly (b).

The Court cannot dispense with publication of the notice of the registration as required by s. 15 (c). Publication of the reasons for reduction (d) is rarely required.

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THE MEMORANDUM OF ASSOCIATION ACT, 1890.

Petitions under the Act may be presented to the Judge having jurisdiction in winding-up (e) under s. 2 of the Winding-up Act, 1890, or to any judge of the Chancery Division having chambers (f).

EXTEN-
SION OF
OBJECTS,
&c.

The full text of the Act will be found in the Appendix. It applies only to companies registered under the Acts of 1862 to 1866, or the Companies Act of 1856 (g).

Its scope is confined to (1.) alteration of the objects of the Company, (2.) substitution of memorandum and articles for a deed of settlement.

The Court may confirm the proposed alteration only if it falls within s. 1, sub-s. 5 of the Act; that is, if the alteration is required to enable the company to carry on its business more economically or efficiently, or attain its main purpose by new or improved means, or to enlarge or change the local area of its operations, or to carry on business which may be combined conveniently or advantageously with the business of the company, or to restrict or abandon any objects specified in the memorandum or deed of settlement.

The Act does not enable the company to alter the rights of different classes of shareholders *inter se*, as by converting founders' or preference shares into ordinary, or dividing

(a) See a form of minute, W. N. (1892), p. 81.

(b) *International Conversion Trust*, W. N. (1892) 100.

(c) Act of 1867, ss. 15 and 16.

(d) *London Steamboat Co.*, 1883, W. N. 123; 31 W. R. 781.

(e) Act of 1877, s. 2.

(f) *Mining Shares Investment Co.* [1893], 2 Ch. 660.

(g) *Islington, &c., Electric Supply*,

(g) S. 1, Memorandum of Association Act; *General Credit Co.*, W. N. (1891), p. 153. A company registered under the Act of 1856 is regarded as registered under the Act of 1862. See s. 176 of that Act, *Nitro-Phosphate Co.*, W. N. (1893), p. 41.

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capital into preferred and deferred shares, or giving a power to sell the whole undertaking.

The proposed alterations must be sanctioned by a **special resolution** of the company before the petition is presented.

The nature of the alterations sanctioned by the Court may be inferred from the following instances :—

Trust investment companies ; to permit wider range of investments (*a*).

Insurance companies ; to include other insurance business (*b*).

Telephone company power ; to make electric appliances (*c*).

Company formed to manufacture and deal in india-rubber goods ; authorized to manufacture and deal in agricultural and sporting implements (*d*).

Companies have been authorized to raise money by debentures (*e*).

As soon as the petition is presented a summons to proceed should be issued.

An affidavit should be produced verifying the petition, and stating the principal newspapers circulating in the places where the company carries on business. The registrar or chief clerk will, on the return of the summons, give directions for the proper advertisements of the hearing of the petition to be issued.

If the judge is satisfied that sufficient notice has been given to debenture-holders and other persons whose interests will be affected, and that there are no creditors entitled to object, he will order the petition to be placed in the paper, otherwise he will direct inquiries to obtain the information required by s. 2 of the Act. The petition will not be placed in the paper until the certificate in answer to the inquiries has become binding.

The Court may, if it be proved that proper notices have been given and creditors satisfied as required by s. 2, in its discretion, make an order confirming the alteration on such terms as it may think fit, having regard to the interest of creditors and different classes of contributories, and may adjourn the petition to allow the interest of dissentients to be purchased. The principles upon which the Court acts in these cases is shewn in the judgment in

(*a*) *Foreign and Colonial, &c.* [1891], 2 Ch. 395; *Government Stock, &c., Co.* [1892], 1 Ch. 597.

(*b*) *Alliance Marine* [1892], 1 Ch. 300; *National Boiler, ib.* 306.

(*c*) *Oriental Telephone, W. N.*

1891, p. 153.

(*d*) *Tuck & Co.*, 4th March, 1893, Chitty, J.

(*e*) *Reversionary Interests Society* [1892], 1 Ch. 615.

the *Government Stock Investment Co.* (a), where, upon the opposition of a minority of debenture-holders, the Court refused to sanction an alteration which would have turned a government stock investment company into an omnium investment company.

The Court will sometimes require the name of the company to be changed where the alteration sanctioned makes the original name misleading or insufficient (b), and will sometimes require the order to be advertised. The Court has power to confirm the proposed alterations with modifications without requiring the modifications to be sanctioned by a special resolution, though in some cases such confirmation has been required (c).

An office copy of the order confirming the alterations, and a print of the memorandum as altered, or of the memorandum and articles substituted for a deed of settlement, must be delivered to the registrar of Joint Stock Companies within fifteen days from the date of the order. The certificate of registration is conclusive that the provisions of the Act have been complied with (d).

The penalty for default is £10 per day (e).

If the order cannot be completed, so that it may be registered within the time limited, the Court has power to make an order extending the time under 273 of the Companies Acts Rules, 1862 (f).

(a) [1891] 1 Ch. 649.

(b) *Foreign & Colonial, &c.* [1891], 2 Ch. 395; *Alliance Insurance* [1892], 1 Ch. 300; *Indian Mechanical Gold Extracting Co.* [1891], 3 Ch. 538.

(c) *National Boiler Insurance* [1892], 1 Ch. 311; *Spiers and Pond,*

W. N. (1895) 135.

(d) *Memorandum of Association Act*, 1890, s. 2 (1).

(e) *Ib.*, s. 2 (2).

(f) *Reversionary Interest Society* (2), 92 W. N. 60; *Criccieth Pier and Harbour Co.* (1891), W. N. 15.

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PART VI.

I.—REMEDIES OF DEBENTURE-HOLDERS.

II.—DUTIES AND LIABILITIES OF RECEIVERS
AND MANAGERS.

PART VI.

I.—REMEDIES OF DEBENTURE-HOLDERS.

A DEBENTURE-HOLDER may: (1.) Petition as a creditor for a winding-up order (*a*). (2.) Prove for the whole or the unsecured part of his debt against the general assets of the company. (3.) Sue for principal and interest on the covenant in the debenture. (4.) If the debenture confer a charge, commence proceedings to enforce his security by foreclosure or sale.

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(1.) A debenture-holder's position as a petitioner is treated in Part I., Chap. IV., p. 49.

(2.) A debenture-holder is not bound to value his security in proving against a solvent company (*b*), but may prove for the full amount of his principal and interest. If the company is insolvent, his position is regulated by s. 10 of the Judicature Act, 1875, and he may give up his security and prove for the whole debt, or value, or realize his security and then prove for the balance. He may prove for principal, interest, and costs (*c*), but must allow to the liquidator, if he realize part of the security, the proper costs of such realization (*d*). The full principal can be proved for if it carries interest to maturity, notwithstanding the debenture was not payable when the winding-up commenced (*e*).

(3.) **Action on the covenant.**—If the debenture do not contain a charge, the remedy is by action on the covenant to pay principal and interest. Judgment can generally be obtained in the Q. B. D. on a specially endorsed writ.

(4.) **Actions for foreclosure or sale.**—Most debentures confer a charge. A debenture-holder having a charge need not wait until principal or interest is due, but may commence

(*a*) *Ante*, p. 49.

(*b*) *Kellock's Case*, 3 Ch. 769.

(*c*) *Talbot's Case*, 39 Ch. D. 567.

(*d*) *Regent's Canal, &c.*, 3 Ch. D.

(*e*) *Re Browne and Wingrove*
[1891], 2 Q. B. 574. As to mode
of proof in such cases, see *ante*,
Part II., p. 356.

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an action to enforce his security if the property subject to the debenture be placed in jeopardy; *e.g.* where the company is insolvent (*a*), or attempts to dispose of the whole of its assets to the prejudice of the security (*b*), or the assets are in jeopardy (*c*), or the property comprised in the debentures is taken in execution by a creditor of the company (*d*), and the execution creditor will be restrained from proceeding with the execution (*e*).

Payment of the principal can probably be enforced even when interest only is in arrear (*f*), and this is certainly the case where there is a winding-up, as then payment of both can be enforced immediately it occurs (*g*).

A debenture is generally expressed to be by way of **floating security**. Under such a charge the company can carry on its business, and give specific charges upon its assets until proceedings are taken to enforce the debentures.

If the goods of a company charged by a debenture constituting a floating security are taken in execution by a creditor of the company and sold, but the proceeds are not handed over to the execution creditor, a debenture-holder may intervene and oust the execution creditor (*h*).

Where a debenture is expressed to be by way of floating security, the company may carry on its business and mortgage its assets, even if interest on the debentures be in arrear until the debenture-holders take some steps to enforce their security (*i*), and the debenture-holder cannot, without taking such steps, require payment to him of a debt due to the company. If a garnishee order has been obtained attaching the debt, the garnishee may pay the judgment creditor, notwithstanding notice that the debt is claimed by the debenture-holder (*k*).

The result of the cases appears to be, that if a judgment creditor of the company can complete his execution, and

(*a*) *MacMahon v. North Kent, &c.* [1891], 2 Ch. 148; *Earl of Lathom v. Greenwich Ferry Co.*, 36 S. J. 789.

(*b*) *Hubbuck v. Helms*, 56 L. T. 232.

(*c*) *Thorn v. Nine Reefs*, 67 L. T. 93.

(*d*) *Edwards v. Standard, &c.* [1893], 1 Ch. 574.

(*e*) *Legg v. Mathiesson*, 2 Giff. 71; *Wildy v. Midhants, &c.*, 16 W. R. 409.

(*f*) *Edwards v. Martin*, 25 L. J. Ch. 284.

(*g*) *Hodson v. Tea Co.*, 14 Ch. D. 859; *Wallis v. Universal Co.* [1894], 2 Ch. 547.

(*h*) *Taunton v. Sheriff of Warwickshire* [1895], 1 Ch. 734; *Standard Manufacturing Co.* [1891], 1 Ch. 640; *Opera Limited* [1891], 3 Ch. 260. In the two latter cases winding-up of the companies had commenced before the sheriff sold.

(*i*) *Government Stock, &c., v. Manila Ry. Co.* [1895], 2 Ch. 551.

(*k*) *Robson v. Smith* [1895], 2 Ch. 118.

get payment out of the assets of the company before a debenture-holder takes proceedings to protect his security, the judgment creditor may retain the money. But the debenture-holder may, by proper proceedings, intercept the money at any time before the execution is completed. A notice that the debenture-holder claims a particular debt is not, without more, sufficient to oust the judgment creditor (a).

Jurisdiction.—Debenture-holders' actions for foreclosure or sale commenced in the High Court must be brought in the Chancery Division. Where the company is in process of compulsorily winding-up when the action is commenced, the action is to be assigned to Vaughan Williams, J. (b).

Transfer.—Where, after commencement of the action, the company is ordered to be wound up by the High Court, the action will be transferred, as a matter of course, to Vaughan Williams, J., by the Lord Chancellor's order.

The transfer will be effected at the instance of the official receiver, without intervention of the parties, but notice will be sent to the solicitor for the plaintiff of the application for transfer.

When the action is transferred, the registrar in winding up has all the powers and duties of a master, registrar, chief clerk, or taxing master(c), and may hear and determine all matters which, if the action had not been transferred, would have been determined in chambers (d).

Orders for transfer are not made except by consent where the company is being wound up under supervision. There might be circumstances under which the Court would make it one of the terms of granting a supervision order, that the plaintiff debenture-holder should consent to transfer his action. It has not, however, been decided that the order for winding up a company referred to in Rule 14 of April, 1892, means a compulsory order only, and the balance of convenience seems in favour of a larger interpretation (e).

Writ.—If the company is being wound up by or under the supervision of the Court, leave must be obtained on a

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(a) *Robson v. Smith* [1895], 2 Ch. 118. p. 316.

(b) Practice Rule of 29th Nov. 1895.

(c) Rules, Aug. 1892, p. 333.

(d) Rules, Ap. 1892, r. 14 (2),

(e) It has, however, been decided that a transfer will not be made under R. S. C., O. 49, r. 5, where a supervision order has been made: *Shingleton Ice Co*, 31 Sol. J. 705.

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summons in the winding-up to bring or continue the action (a). The writ must be intituled in the matter of the company. The plaintiff should sue on behalf of himself and all other debenture-holders of the company. He should specify accurately the class on whose behalf he sues, or the writ will require amendment (b). The defendants should be the company, the trustees of the debenture trust-deed (if any) securing the debentures, and, if there are subsequent debentures, a holder of debentures of each series.

If there be no trust-deed, the writ should claim a declaration of charge, all necessary accounts and inquiries, payment, foreclosure, or sale, and a receiver and manager. Form, p. 615.

If there be a trust-deed, a claim to have the trusts of the deed carried into effect should be added. Form, p. 616.

The plaintiff is *dominus litis*, and can compromise or abandon the action at any time before judgment, and the company may at any time before judgment pay the plaintiff and put an end to the action (c). The plaintiff must be able to maintain the action himself, and if his title is infirm, it is not made better because he sues as representing a class (d). If the company can raise a counterclaim against the particular plaintiff, the action may be delayed (e). If one of the class whom the plaintiff purports to represent dissent from the action, the dissentient may apply by summons in the action to be added as a defendant, and he will be added, though not in a representative character unless he can shew that there are other dissentients (f). A dissentient, until added as defendant, cannot appeal from any order obtained by the plaintiff (g). If the dissentients are numerous, the plaintiffs should apply by summons, under O. 16, r. 9, for an order

(a) *Lloyd v. David Lloyd & Co.*, 6 Ch. D. 339. The leave will be given almost as a matter of course. It may be restricted to taking proceedings to appoint a receiver, or be otherwise limited.

(b) Plaintiff sued "on behalf of themselves and all others the holders of mortgage debentures issued by the defendant company and its predecessors in title." The debentures had been issued by a dissolved company, whose assets and liabilities the defendant company had taken

over. Description held to be too vague: *Marshall v. Staffordshire Trams* [1895], 2 Ch. 36.

(c) *Huggons v. Tweed*, 10 Ch. D. 350.

(d) *Burt v. British, &c.*, 4 D. G. & J. 158.

(e) *Huggons v. Tweed*, 10 Ch. D. 359.

(f) *Wilson v. Church*, 9 Ch. D. 552.

(g) *Watson v. Cave*, 17 Ch. D. 19.

that one may be sued as representing all (a). If the holders of subsequent debentures are numerous, or there are several series, a representative of each series should be made a defendant, and a representation order applied for (b). A defendant appointed to represent a class may submit, but cannot consent to judgment (c). Defendants cannot insist upon having other debenture-holders added as plaintiffs (d), nor obtain the names of the persons on whose behalf the plaintiff purports to sue (e).

By O. 16, r. 8, trustees represent the trust property in proceedings to enforce a security. If, however, any question of priorities is likely to arise, a representative of each interest should be made a party, and an order obtained on summons in the action, appointing him to represent all in the same interest.

Receivers and managers.—Debentures are generally expressed to be a floating security, and until some steps are taken to enforce them, and stop the company carrying on business, the company may create charges in priority to the debentures (f). It is therefore necessary in many cases to apply, immediately the writ is issued, for the appointment of a receiver, and if the company is carrying on business, a manager. Leave to serve notice of motion for this purpose with the writ should be obtained if the time limited for appearance has not expired. Under special circumstances the motion may be *ex parte* (g). The appointment will be made whenever the property charged is in danger (h). It may extend to the rents of land and personal property abroad (i).

The Court will appoint a receiver, but not a manager of the property of a statutory undertaking for public purposes, as a railway, waterworks, or tramway company; as the Court cannot carry on the business except with a

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(a) *Fraser v. Cooper*, 21 Ch. D. 718. (75) 259.

(b) *Fairfield Shipbuilding, &c., Co. v. London and East Coast, &c., Co.*, W. N. 95, p. 64. The record should be marked "authorized by order dated, &c., to defend on behalf of himself and all other the debenture-holders."

(c) *Rees v. Richmond*, 62 L. T. 427. (g) *Taylor v. Eckersley*, 2 Ch. D. 302.

(d) *De Hart v. Stevenson*, 1 Q. B. D. 313. (h) *Makins v. Ibbotson* [1891], 1 Ch. 133; *Edwards v. Standard, &c.*, 1 Ch. [1893], 1 Ch. 574; *Whitley v. Challis* [1892], 1 Ch. 64. See *ante*, p. 269.

(e) *Leathley v. McAndrew*, W. N. (i) *Mercantile, &c., Co. v. River Plate, &c., Co.* [1892], 2 Ch. 303.

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The order usually limits a time, beyond which the receiver shall not act as manager. An order to prolong the time can, if necessary, be obtained on summons.

The appointment amounts to a dismissal of the servants of the company (*b*).

As against the liquidator of the company, the receiver is not entitled to the books and documents of the company relating to its management and business, except such as are necessary to support the title of the holders of debentures. The Court will order the receiver to give the custody of the books to the liquidator on his undertaking to produce the books to the receiver when required (*c*).

Who may be appointed.—Any properly qualified person may be appointed; an accountant is generally selected. If an officer of the Court is in possession as liquidator, he is generally appointed (*d*). A voluntary liquidator is not in the same position, as he is not an officer of the Court (*e*). But the liquidator will not be appointed if he has assumed an attitude hostile to the debenture-holders (*f*); where he required the assets to impeach the validity of the debentures (*g*); where the unpaid capital is small (*h*); where, in consequence of the special nature of the business to be done, it is more convenient to appoint a receiver with special knowledge (*i*), or where the assets are admittedly insufficient to pay debenture-holders (*k*).

But a receiver will be discharged and the liquidator appointed where there is considerable unpaid capital to collect, and it is probable that sufficient has been got in by the receiver to cover the amount of the charges (*l*).

If debenture-holders, or trustees for them, appoint a

(*a*) *Gardner's Case*, 2 Ch. 201; *Blaker v. Herts, &c., Waterworks*, 41 Ch. D. 399; *Marshall v. South Staffordshire Trams* [1895], 2 Ch. 36 (*Bartlett v. West Metropolitan Trams* [1893], 3 Ch. 437 [1894], 2 Ch. 256, disapproved).

(*b*) *Reid v. Explosives Co.*, 19 Q. B. D. 264.

(*c*) *Engel v. South Metropolitan & Co.* [1892], 1 Ch. 442; *Re Clyne, &c., Co.*, 47 L. T. (N. S.) 439.

(*d*) *Perry v. Oriental Hotels Co.*, 5 Ch. 420.

(*e*) *Boyle v. Bettws Co.*, 2 Ch.

D. 726.

(*f*) *Giles v. Nuthall*, W. N. (85) 51.

(*g*) *Strong v. Carlyle Press* [1893], 1 Ch. 268, C. A., reversed the decision of the judge.

(*h*) *Re Joshua Stubbs & Co.* [1891], 1 Ch. 482.

(*i*) *British Linen Co. v. South American Co.* [1894], 1 Ch. 108.

(*k*) *S. C. and Strong v. Carlyle Press*.

(*l*) *Bartlett v. Northumberland Avenue Hotel Co.*, 53 L. T. 611.

receiver under the powers contained in their security, the Court will not displace him and appoint the liquidator, but will order the liquidator to give up possession to the receiver so appointed (a).

By s. 4 (6) of the Companies Winding-up Act, 1890, where an application is made to the Court to appoint a receiver on behalf of the debenture-holders, or other creditors, the official receiver may be so appointed. Plaintiffs seldom take advantage of this section.

A receiver appointed unconditionally may at once take possession (b), but not so if he is appointed on giving security (c). In cases of urgency the Court will give leave to the receiver to act at once, on the plaintiff undertaking that security will be given within a limited time, and undertaking meanwhile for his receipts. The application should be supported by an affidavit shewing the necessity for the appointment, exhibiting an original debenture (which should be in Court at the hearing), and by an affidavit of fitness of the person proposed as receiver.

The receiver must give security in the usual way, in the absence of special directions. When appointed he is an officer of the Court, and any interference with his possession is a contempt (d).

He is entitled to an indemnity out of the assets in respect of his proper expenditure (e).

Borrowing by receiver.—It may be important to raise money to carry on a business of which a receiver and manager has been appointed. Application should be made, on the hearing of the motion to appoint, or subsequently, by summons at chambers, for leave to borrow on the security of the assets. The security given by the receiver should not contain a covenant by him to repay the money borrowed, but should be framed to constitute a first charge on the undertaking in priority to the existing debentures (f). It must be enforced in a fresh action, and not by a summons in the original action directing the receiver to pay the amount due (g). Form of security by receiver, Form 268, p. 616.

(a) *Re Pound, Son & Hutchins*, 42 Ch. D. 402.

(b) *Morrison v. Skerne Iron-works*, 60 L. T. 588.

(c) *Edwards v. Edwards*, 2 Ch. D. 291.

(d) *Helmore v. Smith*, 35 Ch. D. 447.

(e) *Strapp v. Bull* [1895], 2 Ch. 1.

(f) *Greenwood v. Algesiras, &c.* [1894], 2 Ch. 205; *Lathom v. Greenwich Ferry Co.*, W. N. (1895), p. 77.

(g) *Brocklebank v. East London Ry. Co.*, 12 Ch. D. 839.

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Sale before judgment.—O. 51 (R. S. C.), r. 113, provides that in debenture-holders' actions, when the debenture-holders are entitled to a charge by virtue of the debentures, or of a trust-deed or otherwise, and the plaintiff is suing on behalf of himself and other debenture-holders, and the judge in person is of opinion that there must eventually be a sale, he may, in his discretion, direct a sale before judgment, and also after judgment, before all the persons interested are ascertained, whether served or not.

Statement of claim.—See form, p. 616, which must be varied to meet the circumstances. A defence is seldom delivered unless the validity of the debentures is impeached, or a question of priority arises. The defence should then state the special facts. If there is no defence, the action can then be set down and heard in default of pleading, and marked short.

Judgment.—Form, p. 617, is a common form judgment which can be varied to suit the circumstances. It is the practice of the Chancery judges to preface the order with a declaration of charge—at all events, in cases where the company appear at the trial. Vaughan Williams, J., has refused to make this declaration in winding-up without the assent of the liquidator (*a*), on the ground that it might hamper a liquidator desiring to impeach the debentures.

A sale is generally the most convenient way of rendering the company's assets available.

Conditional contracts are often made by the receiver, and if approved by the Court, all necessary parties are directed to concur in carrying them. Applications to confirm these contracts are made by summons in the action.

Where the debentures are all held by one person, he may obtain foreclosure against holders of subsequent debentures and the company on an originating summons (*b*).

The receiver need not be continued unless he was appointed only until judgment (*c*). If appointed manager to act for a limited time, the proper form of judgment is

(*a*) *Marwick v. Thurlow* [1895], 1 Ch. 776, where the declaration was not made; and see *Charlwood v. Leasehold Co.*, W. N. (1895) 47.

(*b*) *Sadler v. Worley* [1894], 2 Ch. 170; see form of judgment. Difficulties would arise if the de-

bentures were in several hands: *Oldrey v. Union Works*, W. N. (1895) 77; or secured by a trust-deed: *Re Alison*, 11 Ch. D. 284; *Locking v. Parker*, 8 Ch. 30.

(*c*) *Underwood v. Underwood*, 37 W. R. 428.

to extend the time (a). When the judgment is perfected, a summons to proceed upon it should be taken out.

Notice of the judgment must be served upon all the debenture-holders when ascertained, unless on the hearing of the summons to proceed it appears to the judge that by reason of absence, or for any other sufficient cause, service of notice cannot be made or ought to be dispensed with; and where service of the notice is dispensed with, the judge may order that the person as to whom notice is dispensed with shall be bound as if served, and he shall be bound accordingly, except where the judgment has been obtained by fraud or non-disclosure of material facts (b).

Advertisements for claims will be issued under the direction of the registrar or the chief clerk, in the manner required by R. S. C., O. 55, r. 47.

The receiver should obtain the sanction of the Court to all expenditure made by him in keeping the company's business afloat, and to any conditional agreement he may enter into for the sale of any part of the company's assets.

Calls.—When uncalled capital is charged by the debentures, the Court has no jurisdiction, in a debenture-holder's action, to order either the receiver or the liquidator to make a call in the action. It can order the liquidator to make a call in the winding-up, and the receiver may be empowered to take steps in the name of the liquidator to get in the call (c). The costs of a winding-up petition will not be ordered to be paid out of moneys produced by a call charged to debenture-holders, but the costs of getting in the call would be allowed to the liquidator (d). If the assets charged will be insufficient to pay the debenture-holders, there seems no reason why the conduct of the proceedings to obtain payment of the call should not be given to the receiver.

Compromises.—Powers are now commonly given by debentures to a specified majority of the holders to bind the minority. These powers usually are to sanction any compromise or modification of the debenture-holders' rights; to release any of the mortgaged premises, and to accept any other property or securities instead of the debentures (e).

(a) *Davis v. Vale of Evesham, &c., Co.*, W. N. (1895) 105.

(b) R. S. C., O. 55, rr. 35 and 35a.

(c) *Fowler v. Broads Patent, &c.*, Co. [1893], 1 Ch. 724.

(d) *Brabourne v. Anglo-Austrian,*

&c., Co. [1895], 2 Ch. 981.

(e) As to such clauses, see *Follit v. Eddystone Granite Quarries* [1892], 3 Ch. 75; *Sneath v. Valley Gold, Ltd.* [1893], 1 Ch. 477; *Mercantile Investment, &c., Co. v. River*

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The Court will, if necessary, direct meetings of the debenture-holders to be called to ascertain the wishes of the majority, and will direct notices and advertisements to be issued for that purpose. The Court may then sanction the resolutions come to, and give effect to them in the action.

When the registrar or chief clerk has made his certificate in answer to the inquiries directed by the judgment, if no summons to vary has been taken out, the action may be set down on further consideration.

Further consideration.—Where the further consideration involves only the payment of costs, distribution of the fund, and the discharge of the receiver, it may be taken in chambers (*a*). If any questions have to be argued, *e.g.* of priorities or amount due for interest, further consideration should be taken in Court. If the assets are sufficient to pay the debentures and interest, the order will direct the calculation of interest and payment of principal and interest due to the persons found by the certificate to be holders of the debentures, taxation, and payment of costs, including the costs of application for leave to commence the action, discharge of receiver, and payment of balance to the company or liquidator. Form of order (*b*), which may be varied to suit the circumstances, will be found in the Appendix.

II.—DUTIES AND LIABILITIES OF RECEIVERS AND MANAGERS.

Effect of appointment of receiver and manager. Powers, duties, and liabilities of receiver and manager.

Receiver.—The object of obtaining the appointment of a receiver is to place the assets under the protection of the Court, and to prevent everybody except the receiver, as an officer of the Court, from in any way intermeddling with them.

Manager.—When it is desired not merely to protect the assets, but also to carry on a trade or business, the receiver should also be appointed manager, otherwise the receiver has no power to carry on the business (*c*). The powers of

Plate, &c., Co. [1894], 1 Ch. 578. As to rights of minority to have company's funds administered where the company's objects have failed, see *Collingham v. Sloper* [1893],

2 Ch. 96.

(*a*) R. S. C., O. r. 55, 2 (6).

(*b*) *Post*, p. 618, Form 271.

(*c*) *Manchester and Milford Ry. Co.*, 14 Ch. D., at p. 653.

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management may be limited (*a*). The modern practice is to direct that the business of the company shall not be carried on by the receiver and manager for a longer period than six months without the leave of the judge in chambers, with liberty to apply for further time (*b*).

The appointment of a manager implies that he has power to deal with the property, and to appropriate the proceeds in a proper manner (*c*).

It has been recently held by the Court of Appeal that where a receiver is appointed, at the instance of mortgagees, over property on which the mortgagor carries on business, the receiver cannot be directed to manage the business unless the business is in express terms, or by implication, included in the mortgage (*d*). The decision was apparently based on the assumption that such a security did not include the good will of the business carried on on the premises; but there are several earlier cases, also in the Court of Appeal, which, however, were not cited, which shew that such a mortgage does include the good will (*e*).

Effect of appointment.—The appointment takes effect as against third parties, not from the date of the order making the appointment, but from the completion of the security required to be given by the order (*f*), unless the receiver be authorized to act at once. Therefore it is not contempt of Court for an execution creditor to seize chattels in the interval between the appointment of the receiver and the completion of the security and possession taken (*f*). But if no security is required (which should appear on the face of the order), the appointment is complete upon possession being taken under the order (*g*).

Possession.—The possession of a receiver is that of the Court, and the effect of his appointment is to remove the parties to the action from possession (*h*); but if a party claiming a right by title paramount is in possession, the

(*a*) *Taylor v. Neate*, 39 Ch. D. 538. Manager not to enter into contracts involving liability of more than £200.

(*b*) *Day v. Sykes, Walker & Co.*, 55 L. T. 763.

(*c*) *Manchester and Milford Ry. Co.*, *supra*.

(*d*) *Whitley v. Challis* [1892], 1 Ch. 64.

(*e*) See *Chisum v. Dewes*, 5

Russ. 29; *Pile v. Pile*, 3 Ch. D. 36; *Cooper v. Metropolitan Board of Works*, 25 Ch. D. 472.

(*f*) *Edwards v. Edwards*, 2 Ch. D. 291; *Ex p. Evans*, 13 Ch. D., at p. 255.

(*g*) *Morrison v. Skene Ironworks Co.*, 60 L. T. 588.

(*h*) *Russell v. E. Ang. Ry.*, 3 Mac. & G. 104; *Ames v. Birkenhead Docks*, 20 Beav. 350.

Part VI. appointment of receiver leaves him in possession (*a*). If a party to the action is appointed, the rule is the same.

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The appointment of a receiver does not affect the proprietary rights of any of the owners; it merely affects the possession of the property, and takes it into the custody of the Court.

A receiver of land never takes actual possession, he only receives the rents (*b*); and he does that not by virtue of any estate or title that is vested in him, but merely as the officer of the Court (*c*).

A receiver is entitled to rents in arrear when he is appointed (*d*).

Duties.—The general duties of a receiver are to take possession of the property over which he is appointed receiver, and under the sanction of the Court, when necessary, to do all such acts of ownership as to receipt of rents, compelling payment of debts, letting lands and houses, and otherwise as the owner himself could do if he were in possession.

If the appointment is of rents of real or leasehold property, the order appointing a receiver usually directs parties to the action, if in possession, to deliver up to the receiver the possession of such parts of the property as are in their hands: the receiver should in this case, as soon as his appointment is complete (*i.e.* when security is given, unless the order provides that no security is required, or that the receiver may act before security given), apply to the parties to give up possession according to the order. If any party refuses to comply with the order, the receiver should report the refusal to the solicitor of the party who has the conduct of the action, who must serve the party personally with a copy of the order, and, if still withheld, compliance can be enforced by a writ of possession under R. S. C., O. 47.

A party is entitled to remain in possession of lands unless he is ordered to deliver them up, but on the application of the receiver he will be ordered to pay an occupation rent (*e*).

Tenants of real property should be required to attorn. If they refuse, application should be made to the Court that the tenants may be ordered to attorn (*f*).

(*a*) *Evelyn v. Lewis*, 3 Hare, 472;
Bryant v. Bull, 10 Ch. D. 153.

(*b*) *Ex p. Evans*, 13 Ch. D.,
at p. 255, *per James, L.J.*

(*c*) *Vine v. Raleigh*, 24 Ch. D.,
at p. 243.

(*d*) *Codrington v. Johnstone*, 1
Beav. 524.

(*e*) *Yorkshire Banking Co. v.*
Mullan, 35 Ch. D. 125.

(*f*) *Reid v. Middleton*, 1 T. & R.
455; or, if the tenancy appears,

Distress.—After attornment the receiver can distrain in his own name (*a*), but before attornment he should distrain in the name of the person who has the legal estate (*b*). It has been stated that the practice is that a receiver may distrain at his own discretion for rent in arrear less than one year; but if in arrear for more than a year, that then an order is necessary (*c*).

The duty of a receiver over **personal property** is to collect all he can get in. The order appointing a receiver usually directs parties to deliver up property in their hands. On refusal, the receiver should give notice to the solicitor of the party who has the conduct of the proceedings, who must take the necessary steps to enforce the order in manner above mentioned with reference to real estates.

Debts.—The receiver must collect the debts. If a debtor refuses to pay, a summons must be taken out for leave to commence proceedings (*d*). It seems that it is not now the practice to give the conduct of proceedings to a receiver (*e*).

As a general rule, a receiver cannot himself maintain an action to compel obedience to an order for delivery of goods, or the payment of money to him by a party to the action (*f*); the party having conduct of the action must take the necessary steps, but he might sue on a bill of exchange in his own name (*f*), or bring detinue for chattels unlawfully detained from him (*f*).

Interference with receiver.—The Court will not allow its receiver to be interfered with, even though he has been erroneously appointed (*g*). Interference with a receiver appointed by the Court (*e.g.* by advertisements tending to prejudice the management of a business carried on by a receiver and manager under order of the Court) is contempt of Court (*h*), and after notice from the receiver, the persons interfering, whoever they may be, and even though enforcing legal rights, are liable to be committed (*i*).

the order may be that the tenant deliver up possession, or pay an occupation rent: *Hobhouse v. Hollcombe*, 2 D. & S. 208.

(*a*) *Pitt v. Snowden*, 3 Atk. 750.

(*b*) *Hughes v. Hughes*, 1 Ves. Jr. 161.

(*c*) *Brandon v. Brandon*, 5 Madd. 473.

(*d*) See form of summons, Daniel's

C. F., p. 731.

(*e*) *Re Hopkins*, 19 Ch. D. 61.

(*f*) *Re Sacker*, 22 Q. B. D., at p. 85, per Fry, L.J.

(*g*) *Ames v. Birkenhead Docks*, 20 Beav. 332.

(*h*) *Helmore v. Smith* (2), 35 Ch. D. 449; *Hawkins v. Gathercole*, 1 Drew. 12.

(*i*) *Ex p. Cochrane*, 20 Eq. 282.

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Applying for directions.—Generally, it is improper for a receiver to do, without the sanction of the judge, anything that may involve the estate in expense (*a*). The limit of the amount which may be applied by the receiver, without the sanction of the Court, is stated to be £30 a year (*b*).

Except in cases of necessity, a receiver should not originate any proceedings. The proper course for him to adopt is to apply to the plaintiff, or the party having the conduct of the proceedings, to make any necessary application to the Court; but if they make default, he may be justified in applying himself (*c*).

Discharge of servants.—The appointment of a receiver and manager at the instance of debenture-holders operates to discharge the servants of the company, but as against the company this is a wrongful dismissal, for which an action would lie against the company (*d*); but if the receiver continues the servant in his employ at the same salary, and for the full period in respect of which the servant would have been entitled to notice, he suffers no damage, and an action against the company would fail (*e*).

Liabilities of receivers and managers.—In the first place a receiver must, unless otherwise ordered, give security duly to account for what he shall receive (*f*). During his receivership he must pass his accounts on the days appointed by the Court (*g*). He is liable for any loss occasioned by his wilful default.

Money not accounted for, and due from a receiver under the Court, is, by his recognizance, made a debt of record, although the balance due has not been ascertained (*h*).

The receiver is a trustee of such money for the persons entitled thereto, and cannot, as against them, plead the Statute of Limitations, although his final accounts have been passed and the recognizances vacated (*h*).

A receiver may be ordered personally to pay costs incurred by reason of his misconduct or neglect in the discharge of his duties (*i*), and he is liable to attachment for breach of an order to pay moneys due from him, although made after he has been discharged from his

(*a*) Seton, 676 (5th edition).

(*b*) *Daniel's Chancery Practice*, 1700 (6th edition).

(*c*) *Parker v. Dunn*, 8 Beav. 497; *Ireland v. Eade*, 7 Beav. 55.

(*d*) *Reid v. Explosives Co.*, 19 Q. B. D. 264.

(*e*) *Ib.*

(*f*) Order 50, r. 16.

(*g*) Order 50, r. 18.

(*h*) *Seagram v. Tuck*, 18 Ch. D. 296; *Re Gent*, 40 Ch. D. 190.

(*i*) *Ex p. Brown*, 36 W. R. 303.

receivership (a). Attachment for breach of such an order is not subject to privilege of Parliament (a). **Part VI.**

Liability on contracts entered into by receivers and managers.—A receiver and manager appointed by the Court is not the agent of the company; they do not appoint him; he is not bound to obey their directions; and they cannot dismiss him, however much they may disapprove of the mode in which he is carrying on the business. Only the Court can dismiss him, or give him directions as to the mode of carrying on the business, or interfere with him if he is not carrying on the business properly (b). Obviously, therefore, he is not the agent of the company, and they are not liable on his contracts, nor can the Court possibly be liable; therefore any orders he may give must, *prima facie*, be taken to be orders given on his own responsibility and credit (c); and, *prima facie*, he is personally liable thereon, with a right to be indemnified out of the assets (d). But if the creditor gives credit on the terms that the manager should not be personally liable, he could not afterwards sue the manager (e). The mere fact that the order sued on is in writing, signed by the manager, and expressed to be given for the company, with the words “receiver and manager” appended to the signatures, is not sufficient to exonerate the manager from his personal liability (f).

Where, however, the receiver and manager is not appointed by the Court, but by the trustees of a debenture trust-deed, different considerations apply. A receiver so appointed is a mere agent, and in carrying on the company's business he does not incur any personal liability (g). Under the usual clause in trust-deeds, a receiver appointed by the trustees is declared to be agent for the company (h), and this is in accordance with the old form of receivership clauses in mortgages (i), and with the provisions of the Conveyancing Act, 1881 (k).

The receiver cannot remain agent for the company after

(a) *Re Gent*, *supra*.

(b) *Burt v. Bull* [1895], 1 Q. B. 276.

(c) *Ib.*, per Lord Esher.

(d) *Strapp v. Bull* [1895], 2 Ch. 1, which see as to questions of priority of receiver's indemnity over debenture-holders and creditors.

(e) *Burt v. Bull*, *supra*, per Esher, M.R., at p. 280.

(f) *Burt v. Bull*, *supra*.

(g) *Owen v. Cronk* [1895], 1 Q. B. 265.

(h) See per Rigby, L.J., in *Owen v. Cronk*, *supra*.

(i) *Jefferys v. Dickson*, 1 Ch. 183; *Law v. Glenn*, 2 Ch., at p. 641.

(k) S. 24, sub-s. 87.

Part VI. liquidation has commenced, and from that date the trustees are liable for the debts incurred by the receiver, as their agent in carrying on the business (*a*). This liability may, and probably does, extend to debts incurred before the company goes into liquidation; at all events, in those cases where the business is carried on by the receiver without the concurrence of the directors or officers of the company (*b*).

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(*a*) *Gaskell v. Gosling*, 12 T. L. R. 72. (*b*) *Ib.*

APPENDIX I.
FORMS.

TITLE AND FORMAL PARTS.

The number in brackets is the number of the form referred to in the Companies Winding-up Rules.

(1.)	No. 1. <hr/> General Title (High Court).
IN THE HIGH COURT OF JUSTICE	No. of 189 .
Companies Winding-up.	
Mr. Justice Vaughan Williams,	
In the Matter of the Companies Acts, 1862 to 1890,	
and	
In the Matter of the (a) Company, Limited.	

(2.)	No. 2. <hr/> General Title (County Court).
IN THE COUNTY COURT OF , holden at	
In the Matter of the Companies Acts, 1862 to 1890,	
and	
In the Matter of the (a) Company, Limited.	

[Title No. 1.]	No. 3. <hr/> Form of summons (general).
Let all parties concerned attend at the office of the registrar, at the Bankruptcy Buildings, Carey Street, London, on the day of 189 , at o'clock in the noon, on the hearing of an application of [the Official Receiver, the Provisional Liquidator of the above-named company], for an order that	
Dated the day of 189 .	
Seal.	
This summons was taken out by the	
To	

NOTE.—If you do not attend, either in person or by your solicitor, at the time and place above mentioned, such order will be made, and proceedings taken as the judge (or registrar) may think just and expedient.

[Title No. 1.]	No. 4. <hr/> Formal parts of notice of motion.
Take notice that this Court will be moved before his Lordship Mr. Justice on day the day of 189 at o'clock, in the noon, or so soon thereafter as counsel can be heard by Mr. of counsel on behalf of that .	

(a) Insert full name of company.

[*Add if necessary*] And take notice that special leave to give this notice for the day aforesaid has been obtained from his Lordship Mr. Justice

Dated this day of 189 .
 A. B. of solicitor for, &c.
 To Mr. E. F. of , and to Mr. G. H. his solicitor.

PETITIONS.

No. 5.

[*Title No. 1.*] (12.)

Petition.

No. of 189 .

In the (a)

In the Matter of the Companies Acts, 1862 to 1890,
 and
 In the Matter of the Company, Limited (b).

To (c)

The humble petition of (d) sheweth as follows:—

1. The Company, Limited (hereinafter called the company), was
 in the month of , incorporated under the Companies Acts.

2. The registered office of the company is at (e)

3. The nominal capital of the company is £ , divided into shares
 of £ each. The amount of the capital paid up or credited as paid
 up is £ .

4. The objects for which the company was established are as follows:—
 To
 and other objects set forth in the memorandum of association
 thereof.

[*Here set out in paragraphs the facts on which the petitioner relies, and
 conclude as follows*]:—

Your petitioner therefore humbly prays as follows:—

(1.) That the Company, Limited, may be wound up by the Court
 under the provisions of the Companies Acts, 1862 to 1890:

(2.) Or that such other order may be made in the premises as shall be
 just.

NOTE.—(f) It is intended to serve this petition on .

[*Title No. 1.*] (13.)

No. 6.

Petition
 by unpaid
 creditor
 on simple
 contract.

[*Paragraphs 1, 2, 3, and 4 as in No. 5.*]

5. The company is indebted to your petitioner in the sum of £
 for (g)

6. Your petitioner has made application to the company for payment

(a) State name of Court, and in the
 High Court the Division and Judge.

(b) [*or as the case may be.*]

(c) Insert title of Court.

(d) Insert full name, title, &c., of
 petitioner.

(e) State the full address of the
 registered office so as sufficiently to
 show the district in which it is situate.

In county court petition, add a state-
 ment that such office is within the
 jurisdiction of the Court.

(f) This note will be unnecessary if
 the company is petitioner.

(g) State consideration for the debt,
 with particulars so as to establish that
 the debt claimed is due.

of his debt, but the company has failed and neglected to pay the same or any part thereof.

7. The company is [insolvent and] unable to pay its debts.

8. In the circumstances it is just and equitable that the company should be wound up.

Your petitioner therefore, &c. [as in No. 5].

[Title and first four paragraphs same as No. 5.]

5. Your petitioners are brokers and commission agents carrying on business at ———. The company is justly and truly indebted to your petitioners in the sum of £—— for commission due on the building of a steamship by the said company for Messrs. ———, of ———, under a contract dated the ——— day of ———, to be payable when the vessel was in frame. The same steam-vessel has been in frame for some time past [or, state here the particular grounds on which the application is made].

No. 7.

By creditor.

6. Your petitioners have made repeated applications for payment of the said sum of £——, but although there is no dispute whatever as to the amount due to your petitioners as aforesaid, the company has neglected or refused to pay the said amount or any part thereof. Your petitioners hold no security for any part of their said debts (a).

7. The company is indebted to divers other creditors besides your petitioners. It is insolvent and utterly unable to pay your petitioners' said debts or its other debts.

8. The sheriff of ——— has recently levied a writ of *feri facias* at the suit of ———, on the goods, chattels, and machinery of the company, and has advertised the same for sale thereunder on ———.

9. The only assets of the company are [here set out any assets].

10. It is just and equitable that the company should be wound up by the Court.

11. It is necessary for the protection of the property of the company and for the interest of the creditors thereof that a provisional liquidator should be immediately appointed [or state here the particular circumstances requiring the immediate appointment of a provisional liquidator].

Your petitioners therefore, &c. [as in Form No. 5].

NOTE.—It is intended, &c. [as in Form No. 5].

[Title No. 1.]

[State the circumstances necessitating the winding-up of the company and the inability to continue business, and set out the assets. See Forms Nos. 5, 6, and 7.]

If a proper sale be effected of the ——— assets of the company, there will be a surplus not only sufficient to pay all the existing debts and liabilities of the company, but also to pay a substantial dividend to all the shareholders (b).

(a) Where there has been a statutory demand, a paragraph will be inserted as follows: "Your petitioner served on the company on the ——— day of ———, by leaving the same at its registered office, a demand under his hand requiring the company to pay the said sum of £——, and the company

has neglected to pay such sum or to secure or compound for the same to the reasonable satisfaction of your petitioner."

(b) See Part I., Chap. IV., p. 50, as to when a shareholder can present a petition.

No. 8.

By fully paid-up shareholder.

No. 9.

Petition
by share-
holder on
ground of
fraud and
non-exist-
ence of
subject
matter for
which
company
was
formed.

[Title No. 1.]

[For the first four paragraphs, see, and adapt from, No. 5.]

5. The prospectus of the company was issued in and about the month of, &c., and the following are the material statements [set forth the portions of the prospectus containing misrepresentations].

6. The said prospectus was extensively circulated and a large number of shares were subscribed for by the public upon the faith of the said prospectus.

7. The said prospectus and the statements therein contained were fraudulent and misleading (in particular the statements referred to in paragraph — hereof, &c.) in the following particulars:—[State concisely the manner in which the prospectus was misleading and fraudulent, and shew that the subject matter for which the company was formed never existed.]

8. The company has not commenced business within a year of its incorporation, or if it ever did commence business, it has suspended its business for the space of a whole year, and under the circumstances hereinbefore stated it never can carry on business.

9. The company is a bubble and a sham, and was formed solely in the interest and for the benefit of the promoters thereof.

10. Notwithstanding the company has not acquired any property, the directors in the month of October last made a call of the — per share which then remained uncalled up.

11. Your petitioner is an original allottee and holder of — shares for which he subscribed on the faith of the said prospectus which he believed to be true, and he has paid the sum of £ — in respect of such shares.

12. In the event of the company being wound up there will be a large return to the shareholders, after discharging all the liabilities of the company.

13. Under the circumstances hereinbefore set forth it is just and equitable that the company should be wound up:—

Your petitioner therefore prays, &c. [as in Form No. 5].

NOTE.—It is intended, &c. [as in Form No. 5].

No. 10.

By com-
pany.

[Title No. 1.]

The humble Petition of the — Company, Limited, having its registered office at, &c.

Sheweth as follows:—

[The first four paragraphs will be the same as No. 5.]

5. By the articles of association of the company (clause —) it was declared that the company adopted and should carry into effect the agreement set forth in the schedule thereto.

6. Upon the incorporation of the company a large number of copies of the prospectuses were issued and circulated by the directors and promoters, by which they, on behalf of the company, invited applications from the public for — of the shares of the company.

7. The — paragraphs of the said prospectus were as follows:— [Here state material parts.]

8. The said prospectus then referred to the opinions of certain persons therein named as to the value of the property and to certain reports, and contained the following further statements:—[Here set out material parts.]

9. The said prospectus was accompanied by two reports, one of Mr. ———, another of Mr. ———. The said reports were expressed to have been made to the directors of the company, and contained the following amongst other statements:—*[Here set out material statements.]*

10. Both the said reports as well as the said prospectus represented to the persons who were invited to take shares in the company that the company had both surface and mining rights over the whole of the said ——— acres.

11. On the faith of the statements contained in the said prospectus as to the extent and value of the said property, a large number of persons subscribed for shares in the company. The number of shares so subscribed for was ———.

12. In the month of ——— last a considerable number of the persons who took shares on the faith of the said prospectus commenced proceedings against the company for rescission of their contracts and return of the money paid by them on their shares, on the grounds amongst others that *[here set out grounds]*.

13. In consequence of these proceedings communications took place between some of the vendors, and promoters, and the shareholders by whom the said proceedings were taken, and the existing directors of the company resigned office, and new directors were appointed at the instance of the said shareholders. Since their appointment the said new directors investigated the circumstances under which the company was formed, and have ascertained the following facts:—*[Here set out facts.]*

14. *[Here set out other facts relating to the property and sale to company, and that agreements were not disclosed in the prospectus of the company nor communicated to the directors.]*

15. *[Here set out the circumstances shewing that the agreements were merely contrived in order to secure the difference in price between the sums mentioned in the agreements as promotion money, or as the case may be.]*

16. The said prospectus did not disclose the facts that the company was promoted by one ——— with the assistance of the said ——— and others, and that a large portion of the difference in price between the sums payable under the agreement of the ——— day of ——— was to be distributed, as the same was in fact distributed, between the said ——— and ———.

17. *[Here set out facts shewing that the directors have entered into contracts for sale of part of the company's land, and that the company has not acquired a proper title to a large portion.]*

18. It will be impossible to work the property of the company successfully if it consists of the small surface acreage of ——— acres, and mining rights over only ——— acres. No mining operations have as yet been commenced on the property of the company, and it would be useless to attempt any such operations if the company have, as the directors are advised, mining rights over only ——— acres. The undertaking of the company, as described in the said prospectus, has entirely failed, and a very large number of shareholders, other than the vendors and promoters and the persons who acquired shares from the vendors and promoters, have a right to repudiate their shares on the ground of misrepresentation. Offers have been made on the part of some of the vendors and promoters to make restitution of a considerable part of the profits derived by them, and if the company is wound up, such restitution can be enforced. In the opinion of the directors such restitution ought to be made for the benefit of the shareholders generally, and this cannot be effectually secured except by a winding-up order, inasmuch as until

No. 10.

such order is made, individual shareholders may recover the moneys paid by them on their shares, and exhaust the assets of the company.

19. The company have not sufficient funds to enable them to carry on their business or to defend any such proceedings if taken. The present debts and liabilities of the company amount to about £——, and the company's assets consist of [*set out assets*].

[*Usually when the petition is presented by the company the assets, if judiciously realized, would be sufficient to pay all claims against the company, and it is so stated in the petition.*]

20. Under the circumstances it is impossible for the company to carry out its undertaking or to continue any business, and the company is in fact commercially insolvent, and the only prospect of securing any money for the shareholders is by means of a winding-up. It is for the reasons herein appearing just and equitable that the company should be wound up.

Your petitioners therefore humbly pray [*as in form No. 5*].

It is not intended to serve this petition on any person.

No. 11.

By share-
holder
and con-
tributory
of an in-
surance
company.

In the Matter of the Companies Acts, 1862 to 1890,
and

In the Matter of the Life Assurance Companies Acts,
1870 and 1872,

and

In the Matter of the ——— Insurance Company,
Limited.

1. The ——— Company, Limited (hereinafter called the company), was incorporated by registration (with articles of association) under the Companies Acts, 1862 to 1890, and the Life Assurance Companies Acts, 1870, 1871, and 1872, on the ——— day of ———.

2. The registered office of the company is in England, and the said memorandum of association further stated that the liability of the shareholders is limited, and the nominal capital of the company is £—— divided into ——— shares of £— each, with power to increase such capital to £——.

3. The objects and purposes of the company as stated in the memorandum of association thereof were among other things as follows, namely:—[*Here set out the objects.*]

4. The company forthwith after its registration proceeded to allot shares, and to grant and issue policies and generally carry on business.

5. The subscribed capital of the company amounts to ——— shares of £— each, of which £—— has been paid up.

6. [*Here describe the nature of the business done by the company.*]

7. The affairs of the company have been managed negligently and unskilfully, and such business in great part has been and is profitless.

8. The following tables, which are compiled from the published accounts of the company, shew accurately the proper business done by the company since its formation to ———.

[*Here follow tables.*]

9. The following table, which is compiled from the published accounts of the company, shews accurately the revenue and the expenditure

(except that the amount actually expended in preliminary expenses by the company has been more than £—— from its formation to ——).

No. 11.
—

[Here set out table.]

10. From the said tables it appears and it is the fact that the new business of the company has been steadily decreasing, but the expenses of the company have been greater than the total premium income, and more than —— per cent. of the total income from all sources, and that the claims on policies have been at the rate of —— per cent. of the total premium income.

11. The whole of the subscribed and paid-up capital of £—— of the company has been lost, so far as the shareholders are concerned. The company has therewith in pursuance of the Life Assurance Companies Acts paid into, and there is now in the Bank of England, as a security for the policy-holders, £——, and the residue (£——) of the subscribed capital has been as above appears expended in preliminary expenses.

12. The directors have not yet published or prepared the balance-sheets and accounts of the company for the year ——, nor have the investigation and statement required by the Life Assurance Companies Act, 1870, yet been deposited as provided by that Act or published. Such investigation, balance-sheet, and accounts have been purposely delayed and kept back by the company and the directors thereof in order not to disclose the insolvent position of the company. Your petitioner is therefore unable to state exactly what has been the business done by the company since the —— day of ——. But it is the fact that such business has been carried on in the same manner as heretofore and as hereinbefore stated by the company, and the expenditure of the company during such period has exceeded the receipts, and the financial position of the company is now worse than it was on the —— day of ——, the date up to which the last published balance-sheet and accounts of the company were made up.

13. The company has no "assurance fund" properly so called, whatever. Apart from the said sum of £—— invested as aforesaid the existing assets of the company are very small, and totally insufficient to enable the company to carry on its business and meet claims as they fall due. Further the company is indebted on various open accounts to the amount of £—— or thereabouts, whereas the present assets of the company available for payment thereof do not exceed £—— or thereabouts.

14. [Here state other particular reasons shewing that a winding-up order will be in the interests of shareholders in general, and that the majority of the shareholders prefer a winding-up by the Court, &c.]

15. The company is insolvent, and it is just and equitable and in the interests of the contributories and of the creditors thereof that the same should be wound up by the Court.

16. Your petitioner is and has been the holder of —— shares in the company since the —— day of ——, of which £—— have been paid up.

Your petitioner therefore prays that [as in form No. 5].

It is intended, &c. [as in form No. 5].

No. 12.

Subject to
super-
vision.

[Title No. 1.]

1 to 4. [*The first four paragraphs will be similar to paragraphs 1 to 4 of No. 5.*]

5. Immediately after its incorporation the company began and has since carried on business at ———.

6. The company is indebted to your petitioner in the sum of £——— for machinery sold and delivered, together with some interest. Your petitioner holds debenture bonds of the company as part security for such sum.

7. At an extraordinary general meeting of the company duly convened and held at the office of Messrs. ———, accountants, of ———, on the ——— day of ———, an extraordinary resolution was passed as follows:—

That it has been proved [*Resolution to wind up. See form under "Voluntary Winding-up"*].

And at the said meeting Mr. ———, of ———, aforesaid, accountant, was duly appointed liquidator of the company for the purposes of the said winding-up.

8. Since the passing of the said resolution your petitioner has made application to the company and the said liquidator for payment of the said sum and interest so owing to him as aforesaid. The said liquidator has admitted that such sum and interest are justly due from the company to your petitioner, but he has not paid the same.

9. The assets of the company consist (*inter alia*) of unpaid calls to the amount of £———, or thereabouts, of the copyhold and leasehold premises mentioned in the said memorandum of association, of the machinery and stock-in-trade, and of other items.

10. The liquidator has not yet got in or received payment of the said sum of £——— due, as aforesaid, from certain members of the company for unpaid calls, and he has not sold the company's said premises, machinery, or otherwise provided funds to pay off the company's creditors.

11. The liquidator is continuing the working of the company's mills, and it is desirable that the said mills and premises should be sold as a going concern.

12. The debts of the company amount to upwards of £———, and the company is unable to pay the same.

13. The majority of the company's creditors are desirous that an order should be made for continuing the voluntary winding-up under the supervision of the Court, and unless such an order is made the interest of the company's creditors will be seriously prejudiced by the voluntary winding-up of the company.

Your petitioner therefore humbly prays:—

1. That an order may be made for continuing the voluntary winding-up of the said ——— Company, Limited, subject to the supervision of the Court;

Or that an order may be made for winding up the said company by the Court under the provisions of the Companies Act, 1862 to 1890.

Or that such other order may be made in the premises as to the Court shall seem meet.

And your petitioner will ever pray, &c.

NOTE.—It is intended to serve this petition on the above-named company, and on A. B., the liquidator thereof.

PETITION TO WIND UP TO COURT OF PALATINE OF LANCASTER.

No. 13.

IN THE CHANCERY OF THE COUNTY PALATINE OF LANCASTER,
 ——— DISTRICT.

Palatine
 of Lan-
 caster.

In the Matter of the Companies Acts, 1862 to 1890,
 and

In the Matter of the ——— Company, Limited.

TO THE RIGHT HONOURABLE THE CHANCELLOR OF THE DUCHY AND
 COUNTY PALATINE OF LANCASTER.

[Here set out the facts and conclude as in form No. 5, substituting the words "your Lordship" in the second part of prayer for "the Court."]

PROCEEDINGS PREVIOUS TO HEARING OF PETITION.

[Title No. 1.] (16.) Ap. 92.

No. 14.

Notice is hereby given that a petition for the winding-up of the above-named company by the High Court of Justice [*or the county court of*] holden at [*or, as the case may be,*], was, on the day of 189 presented to the said Court by the said company [*or by A. B. of*], a creditor [*or contributory*] of the said company [*or, as the case may be*]. And that the said petition is directed to be heard before the Court sitting at on the day of 189 ; and any creditor or contributory of the said company desirous to support or oppose the making of an order on the said petition may appear at the time of hearing by himself or (a) his counsel for that purpose; and a copy of the petition will be furnished to any creditor or contributory of the said company requiring the same by the undersigned on payment of the regulated charge for the same.

Advertise-
 ment of
 petition.

[Signed] (a) [Name.]
 [Address.]

NOTE.—Any person who intends to appear on the hearing of the said petition must serve on or send by post to the above named notice in writing of his intention so to do. The notice must state the name and address of the person, or if a firm the name and address of the firm, and must be signed by the person or firm, or his or their solicitor (if any), and must be served, or if posted, must be sent by post in sufficient time to reach the above named not later than six o'clock in the afternoon of the of 189 .

Fee on advertisement of petition for compulsory order, seven shillings.

[Title No. 1.] (17.)

No. 15.

I, A. B., of &c., make oath and say, that such of the statements in the petition now produced and shewn to me, and marked with the letter A, as relate to my own acts and deeds are true, and such of the said statements as relate to the acts and deeds of any other person or persons I believe to be true.

Affidavit
 verifying
 petition.

(a) In the county court add "his solicitor or."

the petitioner, or by the petitioner if he has no solicitor.

(b) To be signed by the solicitor to

No. 16

**Affidavit
of service
of petition
on mem-
bers, offi-
cers, or
servants.**

[Title No. 1.] (14.)

In the matter of a petition dated _____.

I, _____, of _____, make oath and say:—

1. [*In the case of service of petition on a member, officer, or servant at the registered office, or if no registered office at the principal or last known principal place of business of the company.*]

That I did on _____ day, the _____ day of _____ 189 , serve [*name and description*] a member (or officer) (or servant) of the said company with a copy of the above-mentioned petition, duly sealed with the seal of the Court, by delivering the same personally to the said _____, at [*office or place of business as aforesaid*], before the hour of _____ in the _____ noon.

2. [*In the case of no member, officer, or servant of the company being found at the registered offices or place of business.*]

That I did on _____ day, the _____ day of _____ 189 , having failed to find any member, officer, or servant of the above-named company at [*here state registered office or place of business*], leave there a copy of the above-mentioned petition, duly sealed with the seal of the Court, before the hour of _____ in the _____ noon [*add with whom such sealed copy was left, or where, e.g., affixed to door of offices, or placed in letter-box, or otherwise*].

3. [*In the case of directions by the Court as to the member or members of the company to be served.*]

That I did on _____ day, the _____ day of _____ 189 , serve [*name or names and description*] with a copy of the above-mentioned petition, duly sealed with the seal of the Court, by delivering the same personally to the said _____, at [*place*], before the hour of _____ in the _____ noon.

4. An original petition is hereunto annexed.

No. 17.

[Title No. 1.] (15.)

**Affidavit
of service
of petition
on liqui-
dator.**

In the matter of a petition, dated _____, for winding up the above company under the supervision of the Court.

I, _____, of _____, make oath and say:—

That I did, on _____ day, the _____ day of _____ 189 , serve [*name and description*] the liquidator of the above-named company with a copy of the above-mentioned petition, duly sealed with the seal of the Court, by delivering the same personally to the said _____, at [*place*], before the hour of _____ in the _____ noon.

An original petition is hereunto annexed.

No. 18.

[Title, &c., Nos. 1 and 3.]

**Summons
as to
service of
petition.**

That service of the petition on the _____ day of _____, 18____, preferred unto this Court by A. B., having the order of this Court thereon, that all parties should attend the Court on the said petition on the _____ day of _____, 18____, by delivering a copy thereof, together with a copy of the order to be made hereon to C. D., of _____, in _____, one of the directors [*or, the secretary*] of the said company, and also to J. & Co., the solicitors of the said company, *or* by leaving a copy thereof, together with the order to be made hereon, at the last registered office of the above-named

company, or if such last-mentioned office be closed, then by advertising the same in the *London Gazette*, and two daily morning newspapers, be deemed good service of the said petition on the said company, the respondents in the said petition named.

No. 18.

[Title, &c., No. 1.] (15a.) Ap. 92.

No. 19.

Take notice, that A. B. (a), a creditor for £ [or contributory holding shares in] the above company intends to appear on the hearing of the petition advertised to be heard on the day of 189, and to support [or oppose] such petition.

Notice of intention to appear on petition.

(Signed) (b) (Name of person or firm.)
(Address.)

To

[Title.] (16a.) Ap. 92.

No. 20.

The following are the names of those who have given notice of their intention to attend the hearing of the petition herein on the day of , 189 (c).

List of parties attending hearing.

Names.	Addresses.	Creditors. Amount of debt.	Contributories. Number of shares.	Opposing.	Supporting.
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[Title, &c., Nos. 1 and 3.]

No. 21.

That the petitioner who is [here state if resident out of jurisdiction, or ground of application] may be ordered within days to give security to the amount of £ to answer the costs in these matters, and that all proceedings in these matters may be stayed in the meantime, or that such other order, &c.

Summons for security for costs.

[Title No. 1.]

No. 22.

Take notice that you are hereby required to produce before his Lordship at the hearing of the petition in these matters on the day of , all the documents set out in the schedule hereto, and any other deeds, documents, letters, books, papers, and writings in your custody, possession, or power, containing any entry, memorandum, or other matter whatsoever in anywise relating to the matters in question in these matters or any of them. Dated, &c.

Notice to produce documents at hearing of petition (d).

A. B.,
Solicitor to, &c.

To Mr. and Messrs. , his solicitors.
[or as the case may be].

(a) State full name, or if a firm, the name of the firm.

(b) To be signed by the person or his solicitor.

(c) The names and addresses of the solicitors for the creditors and con-

tributories should be given in the form.

(d) With slight alteration this will be applicable when the production is before an examiner, and it can easily be altered to the case of a motion or summons.

No. 23.

PROVISIONAL LIQUIDATOR.

Notice of
motion or
summons
for pro-
visional
liquidator.

[Title, &c., Nos. 1, 3, or 4.]

On the part of the petitioner in these matters that may be appointed provisional liquidator of the said company with power to act forthwith. [*Set out any special powers required, such as carrying on business, &c.*], and with such other powers as, &c.

No. 24.

[Title.] (21.)

Order ap-
pointing
provision-
al liqui-
dator.

Upon the application, &c., and upon reading, &c., the Court doth hereby appoint Mr. , of, &c. [or Mr. , the Official Receiver attached to the Court, *as the case may be*] to be Provisional Liquidator of the above-named company. [*If any person other than Official Receiver is appointed, and security disposed with, add without security; or if security is to be given, add directions as to security, accounts, and payment into bank.*] And the Court doth hereby limit and restrict the powers of the said Official Receiver as Provisional Liquidator to the following acts, that is to say [*describe the acts which the Provisional Liquidator is to be authorized to do and the property of which he is to take possession*] (a).

No. 25.

[Title.] (19b.) Ap. 92.

To the Official Receiver of the Court.

[Address.]

Orders pronounced this day by the Honourable Mr. Justice or, *as the case may be* for the appointment of the Official Receiver as provisional liquidator prior to any winding-up order being made.

Name of Company.	Registered Office of Company.	Petitioner's Solicitor.
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No. 26.

ORDER ON PETITION.

[Title] (18.)

Order for
winding-
up by the
Court.

Upon the petition of of the above-named company on the 189 , preferred unto this Court, and upon hearing counsel for the petitioner for the above-named company, and for and upon reading the said petition an affidavit of filed the 189 (verifying the said petition), the *London Gazette* dated 189 , and the news-
paper dated the 189 . and each containing an advertisement of the said petition—

This Court doth order that the said be wound up by this Court under the provisions of the Companies Acts, 1862 to 1890.

And it is ordered that one of the Official Receivers attached to this

(a) See limitations on powers inserted [1892], 1 Ch. 211.
in order: *Mercantile Bank of Australia*

Court be constituted Provisional Liquidator of the affairs of the said company.

And it is ordered that the costs of the petitioner and of the said company and of
Registrar

No. 26.

NOTE.—It will be the duty of the person who is the secretary or chief officer of the company, and such of the persons who are liable to make out, or concur in making out, the company's statement of affairs as the Official Receiver may require him or them, to attend on the Official Receiver forthwith on the service of this order.

The Official Receiver's offices [*state address*] are open every week-day from a.m. to p.m., except on Saturdays, when they close at p.m.

[*Title.*]

Order that the voluntary winding-up of the said company be continued, but subject to the supervision of this Court; and any of the proceedings under the said voluntary winding-up may be adopted as the Court shall think fit.

No. 27.

Supervision order.

Order that the liquidator in the voluntary winding-up of the said company do on the next, and on the same day in each succeeding month, file with the Registrar Companies (Winding-up) a report in writing as to the position of and the progress made with the winding-up of the said company and with the realization of the assets thereof, and as to any other matters connected with the winding-up as the Court may from time to time direct.

Order that no bills of costs, charges, or expenses, or special remuneration of any solicitor employed by the liquidator of the said company, or any remuneration, charges, or expenses of such liquidator, or of any manager, accountant, auctioneer, broker, or other person be paid out of the assets of the said company, unless such costs, charges, expenses, or remuneration shall have been taxed or allowed by the Registrar Companies (Winding-up).

Order that all such costs, charges, expenses, and remuneration be taxed accordingly.

Liberty to apply.

Upon the petition, &c.

And the said debenture-holders by their counsel undertaking that they will, after the inquiry and investigation hereinafter mentioned, forthwith elect either themselves to take proceedings against the directors and other officers of the above-named company, or to allow the liquidator of the said company to take such proceedings for the benefit of the unsecured creditors; in the latter event undertaking to give up all right to any property or assets so recovered.

And the said , the liquidator in the voluntary winding-up of the above-named company, by his counsel consenting to retire from his position as such voluntary liquidator; and the liquidator hereinafter named, having given an undertaking to the Court to forthwith proceed with the inquiry and investigate the several matters alleged against the directors and other officers of the said company, and against the internal working of the said company, mentioned or referred to in the

No. 27a.

Order for supervision in Bywater, Tanqueray, and Phayre, Limited, O. 155 of 1895, containing undertaking by debenture-holders

No. 27a.

either to
take mis-
feasance
proceed-
ings or
allow un-
secured
creditor
to do so
for their
own bene-
fit.

said affidavits or some of them, so far as the funds subscribed by the unsecured creditors of the said company for that purpose will permit, and which undertaking is filed with the proceedings in this matter; this Court doth hereby appoint the said _____ of _____ liquidator of the above-named company in the place of the said _____.

And it is ordered that the said _____ do on or before the _____ 189 , give security to the satisfaction of the Court.

And this Court doth order that the voluntary winding-up of the said Bywater, Tanqueray, and Phayre, Limited, be continued, &c. [*as in preceding form*].

And it is ordered that the costs of the petitioners of the above-named company and of the said creditors and contributories supporting a winding-up order be taxed and paid out of the assets of the above-named company, but on such taxation only one set of costs is to be allowed the said creditors and one set of costs to the said contributories.

Liberty to the unsecured creditors or any of them to apply for recoupment by the debenture-holders of the amount subscribed by the unsecured creditors for the purposes of the investigation hereinbefore mentioned, if the said debenture-holders elect to take the said proceedings against the directors and other officers of the above-named company.

And the creditors, contributories, and liquidator of the said company and all other persons interested are to be at liberty to apply generally as there may be occasion.

And the time within which this order is to be advertised is extended until the _____ 189 , inclusive.

No. 28.

Usual un-
dertaking
where pe-
tition
stands
over.

The said company by their counsel undertaking not to consent to any winding-up order on any other petition or to wind up voluntarily, and undertaking to give notice in writing to the solicitors for the petitioners of any other petition for winding-up presented or served upon the company [*or, of other proceedings taken by a creditor, shareholder, or by any mortgagee or incumbrancer to enforce their security*], and in the event of any such other petition being served upon them to consent to the petition of, &c., so being restored to the paper and that this application may be renewed in the same manner as if the petition had not been ordered to stand over (a).

No. 29.

Order dis-
missing
petition.

[*Title No. 1.*]

This Court doth order that the said petition do stand dismissed out of this Court with costs to be taxed and paid by the petitioner A. B. to the said _____ Company, Limited, and to the said, &c. [*Name any creditors or shareholders appearing.*]

No. 30.

Notice of
order to
wind up
(for local
paper).

[*Title.*] (20.)

Notice is hereby given that by an order made by the High Court of Justice in the above matter, dated the _____ day of _____ 189 , on the petition of _____ It was ordered that the said company be wound up by this Court under the provisions of the Companies Act, 1862 to 1890.

(a) See *St. Thomas' Dock Co.*, 2 Ch. D. 116; *Forest of Dean Coal Co.*, 21 Ch. D. 169.

Notice is also hereby given that the Board of Trade has, by virtue of the powers conferred by the Companies (Winding-up) Act, 1890, appointed Mr. _____ to be the Official Receiver of the company for all purposes under the said Act, and that the first meeting of creditors will be held at _____ on the _____ day of _____ 189 , at _____ o'clock, and the first meeting of contributories will be held at _____ on the _____ day of _____ 189 , at _____ o'clock.

Dated this _____ day of _____ 189 .

Official Receiver and Provisional Liquidator.

NOTE.—All debts due to the company should be paid to the Official Receiver at his office at _____ .

[Title No. 1.]

By an order made by [*judge*] in the above matter, dated the _____ day of _____, 18 , on the petition of the above-named company [*or* A. B., of _____], it was ordered that, &c. [*as in Order*].

Dated this, &c. C. & D., of, &c.

Solicitors for the said petitioner.

No. 30.

Adver-
tisement
of super-
vision
order.

[Title No. 1.] (19a.) Ap. 92.

To the Official Receiver of the Court.

[Address.]

Orders pronounced this day by the Honourable Mr. Justice [*or, as the case may be*] on petitions for winding-up of companies under the Companies Acts, 1862 to 1890.

No. 32.

Notice to
Official
Receiver
of wind-
ing-up
orders.

Name of Company.	Registered Office of Company.	Petitioner's Solicitor.
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PROCEEDINGS SUBSEQUENT TO PETITION.

[Title Nos. 1 and 3.]

That the persons named in the schedule hereto do within 4 days after service of the order to be made hereon submit and verify or concur in and verify a statement of the affairs of the above-named company pursuant to the provisions of section 7 of the Companies (Winding-up) Act, 1890, and the Companies (Winding-up) Rules. And that the said _____ do pay the costs of and occasioned by this application.

Dated the _____ day of _____ 189 .

This summons was taken out by the Official Receiver in Companies Liquidation, 33, Carey Street, Lincoln's Inn, W.C.

To

No. 33.

Summons
to submit
statement
of affairs.

NOTE.—If you do not attend, either in person or by your solicitor, at the time and place above mentioned, such order will be made, and proceedings taken as the judge (or registrar) may think just and expedient.

THE SCHEDULE.

Name.	Address.	Connection with Company.
-------	----------	--------------------------

No. 34.

Statement
of affairs.

(i.) Statement of Affairs.

[Title.] (33 I.)

STATEMENT OF AFFAIRS on the day of 189 , the date of the Winding-up Order.

I.—As regards *Creditors*.

Gross Liabilities.	Liabilities.		Expected to rank.		Assets.		Estimated to produce.	
	£	s.	£	s.	£	s.	£	d.
		d.		d.				

I.—As regards Creditors—(continued).

No. 34.

Gross Liabilities.		Liabilities.	Expected to rank.			Assets.	Estimated to produce.		
£	s.	d.	£	s.	d.		£	s.	d.
						(d) Surplus from securities in the hands of creditors fully secured (per contra) (b)			
						(e) Unpaid calls, as per List "K"	£	s.	d.
						Estimated to produce			
						Estimated total assets			
						Deduct loans on debenture bonds secured on the assets of the company as per contra (f)			
						Estimated net assets			
						Deduct preferential creditors as per contra (g)			
						Estimated amount available to meet unsecured creditors, subject to cost of liquidation			
						Estimated deficiency of assets to meet liabilities of the company, subject to cost of liquidation			
						Estimated surplus (if any) after meeting liabilities of company, subject to cost of liquidation	£		

The nominal amount of unpaid capital liable to be called up to meet the above deficiency is £

No. 34.

II.—As regards Contributories (33a).

Capital issued and allotted, viz. :—					Estimated surplus as above (if any) subject to costs of liquidation				
Founders' Shares of £ per share									
Amount called up at £ per share, as per List "L"									
Ordinary Shares of £ per share									
Amount called up at £ per share, as per List "M"									
Preference Shares of £ per share									
Amount called up at £ per share, as per List "N"									
(Add particulars of any other capital.)									
£									
Less unpaid calls estimated to be irrecoverable									
Add deficiency to meet liabilities as above					Total deficiency as explained in Statement "O"				
£									

I, _____ of _____, make oath and say that the above statement and the several lists hereunto annexed marked are, to the best of my knowledge and belief, a full, true, and complete statement of the affairs of the above-named company on the day of _____ 189 , the date of the winding-up order.

Sworn at _____ this _____ } Signature .
day of _____ 189 , before me

LIST "A."

UNSECURED CREDITORS.

The Names to be arranged in Alphabetical Order and numbered consecutively, Creditors for £10 and upwards being placed first.

NOTES.—1. When there is a contra account against the creditor, less than the amount of his claim against the Company, the amount of the creditor's claim and the amount of the contra account should be shown in the third column, and the balance only be inserted under the heading "Amount of Debt," thus:—

Total amount of claim : : : :
Less : Contra account : : : :

No such set-off should be included in List "I."

2. The particulars of any bills of exchange and promissory notes held by a creditor should be inserted immediately below the name and address of such creditor.

3. The names of any creditors who are also contributories, or alleged to be contributories, of the company must be shown separately and described as such at the end of the list.

No.	Name.	Address and Occupation.	Amount of Debt.	Date when Contracted.		Consideration.
				Month.	Year.	

Signature
Dated

189 .

LIST "B."

CREDITORS FULLY SECURED (NOT INCLUDING DEBENTURE HOLDERS).

No.	Name of Creditor.	Address and Occupation.	Amount of Debt.	Date when Contracted.		Consideration.	Particulars of Security.	Date when given.	Estimated Value of Security.	Estimated Surplus from Security.
				Month.	Year.					
Signature _____										
Dated _____ 189 .										

LIST "C."

CREDITORS PARTLY SECURED.

(State whether also Contributories of the Company.)

No.	Name of Creditor.	Address and Occupation.	Amount of Debt.	Date when Contracted.		Consideration.	Particulars of Security.	Month and Year when given.	Estimated Value of Security.	Balance of Debt Unsecured.
				Month.	Year.					
Signature _____										
Dated _____ 189 .										

No. 34.

LIST "D."

LIABILITIES OF COMPANY ON BILLS DISCOUNTED OTHER THAN THEIR
OWN ACCEPTANCES FOR VALUE.

No.	Acceptor's Name, Address, and Occupation.	Whether liable as Drawer or Indorser.	Date when due.	Amount.	Holder's Name, Address, and Occupation (if known),	Amount expected to rank for Dividend.
-----	--	--	-------------------	---------	---	--

Signature
Dated

189 .

LIST "E."

OTHER LIABILITIES.

Full Particulars of all Liabilities not otherwise Scheduled to be given
here.

No.	Name of Creditor or Claimant.	Address and Occupation.	Amount of Liability or Claim.	Date when Liability incurred.		Nature of Lia- bility.	Con- sidera- tion.	Amount expected to rank against Assets for Dividend.
				Month.	Year.			

Signature
Dated

189 .

LIST "F."

LIST OF DEBENTURE HOLDERS.

The names to be arranged in Alphabetical Order and numbered con-
secutively. *Separate Lists* must be furnished of Holders of each Issue of
Debentures should more than one Issue have been made.

No.	Name of Holder.	Address.	Amount.	Description of Assets over which Security extends.
-----	-----------------	----------	---------	--

Signature
Dated

189 .

LIST "G."

PREFERENTIAL CREDITORS FOR RATES, TAXES, SALARIES, AND WAGES.

No.	Name of Creditor.	Address and Occupation.	Nature of Claim.	Period during which Claim accrued due.	Date when due.	Amount of Claim.	Amount payable in full.	Difference ranking for Dividend.
-----	-------------------	-------------------------	------------------	--	----------------	------------------	-------------------------	----------------------------------

Signature
Dated

189 .

LIST "H" (33b).

PROPERTY.

Full particulars of every description of property not included in any other list, are to be set forth in this list.

Full Statement and Nature of Property.	Estimated Cost.			Estimated to produce.		
	£	s.	d.	£	s.	d.
(a) Cash at bankers						
(b) Cash in hand						
(c) Stock-in-trade, at						
(d) Machinery, at						
(e) Trade fixtures, fittings, office furniture, utensils, &c.						
(f) Investments in stocks and shares (a)						
(g) Loans for which mortgage or other security held (a)						
(h) Other property, viz :—						
(a) State particulars.						

Signature
Dated

189 .

No. 34.

LIST "I."

DEBTS DUE TO THE COMPANY.

The names to be arranged in Alphabetical Order, and numbered consecutively.

NOTE.—If any debtor to the company is also a creditor, but for a less amount than his indebtedness, the gross amount due to the company and the amount of the contra account should be shown on the third column, and the balance only be inserted under the heading "Amount of Debt," thus :—

	£	s.	d.
Due to company	.	.	.
Less : Contra account	.	.	.

No such claim should be included in sheet "A."

No.	Name of Debtor.	Residence and Occupation.	Amount of Debt.			Folio of Ledger or other Book where Particulars to be found	When contracted.		Estimated to produce.	Particulars of any Securities held for Debt.
			Good.	Doubtful.	Bad.		Month.	Year.		
.										

Signature

Dated

189 .

LIST "J."

BILLS OF EXCHANGE, PROMISSORY NOTES, &c., ON HAND AVAILABLE AS ASSETS.

No.	Name of Acceptor of Bill or Note.	Address, &c.	Amount of Bill or Note.	Date when due.	Estimated to produce.	Particulars of any Property held as Security for Payment of Bill or Note.

Signature

Dated

189 .

LIST "K."

No. 34.

UNPAID CALLS.

No. in Share Register.	Name of Share- holder.	Address and Occu- pation.	No. of Shares held.	Amount of Call per Share unpaid.	Total Amount due.	Estimated to realize.
------------------------------	------------------------------	---------------------------------	------------------------	---	-------------------------	--------------------------

Signature

Dated

189 .

LIST "L."

FOUNDERS' SHARES.

Register No.	Name and Address of Shareholder.	Nominal Amount of Share.	No. of Shares held.	Amount per Share called up.	Total Amount called up.
-----------------	-------------------------------------	--------------------------------	---------------------------	-----------------------------------	-------------------------------

Signature

Dated

189 .

LIST "M" (33c).

ORDINARY SHARES.

No.	Register No.	Name and Address of Shareholder.	Nominal Amount of Share.	No. of Shares held.	Amount per Share called up.	Total Amount called up.
-----	-----------------	-------------------------------------	--------------------------------	---------------------------	-----------------------------------	-------------------------------

Signature

Dated

189 .

LIST "N."

PREFERENCE SHARES.

Register No.	Name and Address of Shareholder.	Nominal Amount of Shares.	No. of Shares held.	Amount per Share called up.	Total Amount called up.
-----------------	-------------------------------------	---------------------------------	---------------------------	-----------------------------------	-------------------------------

Signature

Dated

189 .

No 34.

LIST "O."

Deficiency Account.

(1) DEFICIENCY ACCOUNT WHERE WINDING-UP ORDER MADE WITHIN THREE YEARS OF FORMATION OF COMPANY.

I. Gross profit (if any) arising from carrying on business from date of formation of Company, to date of Winding-up Order	£	s.	d.
II. Deficiency as per Statement of Affairs.			
I. Expenses of carrying on business from date of formation of Company to date of Winding-up Order, viz. :—	£	s.	d.
Salaries and Wages			
Rents, Rates, and Taxes			
Miscellaneous Trade Expenses			
Depreciations written off in Company's Books			
Interest on Loans			
II. Bad Debts (if any) as per List "I" (a)			
III. Directors' Fees from date of formation of Company to date of Winding-up Order			
IV. Dividends paid (if any) from date of formation of Company to date of Winding-up Order			
V. Losses on Investments realized, from date of formation of Company to date of Winding-up Order, exclusive of depreciation written off as above, viz. :— (b)			
VI. Depreciation on property not written off in Company's Books, viz. :— (c)			
VII. Other Losses and Expenses (if any) (b) from date of formation of Company, to date of Winding-up Order, viz. :— (d)	£	s.	d.
VIII. Unpaid Calls			
Less Amount taken credit for in front sheet as estimated to be realized therefrom.			
Balance estimated as irrecoverable			
Total amount to be accounted for	£	s.	d.
Total amount accounted for			

(a) This list must show when debts were contracted.
(b) Here add particulars of other losses or expenditures, and of liabilities (if any) for which no consideration received.

(d) Where particulars are in separate schedule.

Signature _____
Dated _____

681.

Deficiency Account.

(2) DEFICIENCY ACCOUNT WHERE WINDING-UP ORDER MADE WITHIN THREE YEARS OF FORMATION OF COMPANY.

I. Excess of Assets over Capital and Liabilities on the (a) day of 18 (if any), as per Company's Balance Sheet	£	s.	d.	I. Excess of Capital and Liabilities over assets on the (a) day of 18 (if any), as per Company's Balance Sheet	£	s.	d.
II. Gross profit (if any) arising from carrying on business from the (a) day of 18				II. Expenses of carrying on business from the (a) day of 18, viz.:— Salaries and Wages Rent, Rates, and Taxes Miscellaneous Trade Expenses Depreciations written off in Company's Books Interest on Loans			
III. Deficiency as per Statement of Affairs				III. Bad Debts (if any) as per List "I" (b)			
				IV. Directors' Fees from the (a) day of 18			
				V. Dividends paid (if any) since the (a) day of 18			
				VI. Losses on Investments realized since the (a) day of 18, exclusive of depreciation written off as above, viz.:—(d)			
				VII. Depreciation on property not written off in Company's Books, viz.:—(d)			
				VIII. Other Losses and Expenses (if any) (c) since the (a) day of 18, viz.:—			
				IX. Unpaid Calls, as per List "K"			
				Less Amount taken credit for in front sheet as estimated to be realized therefrom			
				Balance estimated as irrecoverable			
Total amount to be accounted for . . . (e) £				Total amount accounted for (e) £			

Signature
Dated 189 .

(a) Three years before date of Winding-up Order.
(b) This list must show when debts were contracted.
(c) Here add particulars of other losses or expenses (if any) and liabilities (if any) for which no consideration received.

(d) Where particulars are numerous they should be inserted in a separate schedule.
(e) These figures should agree.

No. 35.

(ii.) First Meetings of Creditors and Contributories.

Notice to
creditors
of first
meeting.

[Title No. 1.] (22.)

(Under the order for winding up the above-named company,
dated the day of 189 .)

Notice is hereby given that the first meeting of creditors in the above
matter will be held at on the day of 189 , at
o'clock in the noon.

To entitle you to vote thereat your proof must be lodged with me not
later than o'clock on the day of 189 .

Forms of proof and of general and special proxies are enclosed herewith.
Proxies to be used at the meeting must be lodged with me not later than
o'clock on the day of 189 .

Official Receiver.
Address.

(The statement of the company's affairs (a) .)

NOTE.

At the first meetings of the creditors and contributories they may
amongst other things:—

1. By resolution determine whether or not an application is to be made
to the Court to appoint a liquidator in place of the Official Receiver.

2. By resolution determine whether or not an application shall be
made to the Court for the appointment of a committee of inspection to
act with the liquidator, and who are to be the members of the committee
if appointed.

NOTE.—If a liquidator is not appointed by the Court the Official
Receiver will be the liquidator.

No. 36.

[Title No. 1.] (23.)

Notice to
contribu-
tories of
first meet-
ing.

Notice is hereby given that the first meeting of the contributories in
the above matter will be held at on the day of 189 ,
at o'clock in the noon.

Forms of general and special proxies are enclosed herewith. Proxies to
be used at the meeting must be lodged with me not later than o'clock
on the day of 189 .

Dated this day of 189 .

Official Receiver.

(The company's statement of affairs (a) .)

NOTE.

At the first meetings of creditors and contributories they may amongst
other things:—

1. By resolution determine whether or not an application shall be
made to the Court to appoint a liquidator in place of the Official
Receiver.

2. By resolution determine whether or not an application shall be made
to the Court for the appointment of a committee of inspection to act

(a) Here insert "has not been lodged," or "has been lodged, and summary is
enclosed."

with the liquidator, and who are to be the members of the committee of inspection.

NOTE.—If a liquidator is not appointed by the Court the Official Receiver will be the liquidator.

No. 36.

[Title No. 1.] (24.)

Take notice that the first meeting of creditors [*or contributories*] will be held on the day of 189 , at o'clock at (*a*) , and that you are required to attend thereat, and give such information as the meeting may require.

Dated this day of 189 .

To (*b*) .

Official Receiver.

No. 37.

Notice to directors, &c., to attend first meeting.

[Title No. 1.] (25.)

I, the Official Receiver of , do hereby nominate Mr. of to be the chairman of the first meeting of creditors [*or contributories*] in the above matter, appointed to be held at on the day of 189 , and I depute him (*c*) to attend such meeting and use, on my behalf, any proxy or proxies held by me in this matter.

Dated this day of 189 .

Official Receiver.

No. 38.

Authority to deputy to act as chairman and use proxies.

[Title No. 1.] (3a.)

Before at on the day of 189 , at o'clock. Memorandum.—The adjourned meeting of (*d*) in the above matter was held at the time and place above mentioned; but it appearing that there was not a quorum of (*d*) qualified to vote present or represented, no resolution was passed, and the meeting was not further adjourned.

Chairman.

No. 39.

Memorandum of proceedings at adjourned first meeting (no quorum).

[Title.] (32.)

I, [*A. B.*, the Official Receiver of the Court] [*or as the case may be*] [*I, H. T.*, the person appointed by [*name of judge*] to act as (*e*)] chairman of a meeting of the creditors [*or contributories*] of the above-named company, summoned by advertisement [*or notice*] dated the day of 189 , and held on the day of 189 , at in the county of , do hereby report to the Court the result of such meeting as follows:—

No. 40.

Chairman's report of result of meeting.

(*a*) Here insert place where meeting will be held.

(*b*) Insert name of person required to attend.

(*c*) Here insert "Being a person in my employment or under my official control, *or* being an officer of the

Board of Trade."

(*d*) Insert "creditors" or "contributories" as the case may be.

(*e*) The words in the thick brackets are used in respect to general meetings in windings-up under the Act of 1862 by the Gen. O. 1862.

No. 40.

The said meeting was attended, either personally or by proxy, by creditors [whose proofs of debt] [to whom debts (a)] against the said company [were admitted for voting purposes], [have been allowed (a)] amounting in the whole to the value of £ [or by contributories, holding in the whole shares in the said company, and entitled respectively by the regulations of the company to the number of votes hereinafter mentioned].

The question submitted to the said meeting was, whether the creditors [or contributories] of the said company wished that [here state proposal submitted to the meeting].

The said meeting was of opinion that the said proposal should [or should not] be adopted [or the result of the voting upon such question was as follows:]

The undermentioned creditors [or contributories] voted in favour of the said proposal being adopted :

Name of Creditor [or Contributory].	Address.	Value of Debt [or Number of Shares].	Number of Votes conferred on each Contributory by the Regulations of the Company.
--	----------	---	--

The undermentioned creditors [or contributories] voted against the said proposal being adopted :

Name of Creditor [or Contributory].	Address.	Value of Debt [or Number of Shares].	Number of Votes conferred on each Contributory by the Regulations of the Company.
--	----------	---	--

Dated this day of 189 .

(Signed) H. T.,
Chairman.

No. 41.

[Title No. 1.] (37.)

Order
directing
a public
examina-
tion.

Upon the application of the Official Receiver in the above matter, by summons dated the 189 . and upon hearing the applicant in person, and reading the order to wind up the said company, dated 189 , and the two reports of the applicant made to the Court, and dated respectively the

It is ordered that the several persons, whose names and addresses are set forth in the schedule hereto, do attend before a Registrar in Bankruptcy of the High Court on a day to be named for the purpose, and be publicly examined as to the promotion or formation of the company, and as to the conduct of the business of the company, and as to their conduct and dealings as directors or officers of the company.

THE SCHEDULE REFERRED TO.

Name.	Address.	Connection with the Company.
-------	----------	------------------------------

(a) The words in the thick brackets are used in respect to general meetings in windings-up under the Act of 1862 by the Gen. O. 1862.

[Title No. 1.]

No. 42.

Whereas by an order of this Court, made on the day of 189 , it was ordered that you, the undermentioned , should attend before the Registrar on a day to be named for the purpose, and to be publicly examined as to the promotion or formation of the company, and as to the conduct of the business of the company, and as to your conduct and dealings as (a)

Notice to attend public examination.

And whereas the day of 189 , at o'clock, in the noon, before the Registrar, sitting at Bankruptcy Buildings, Carey Street, London, has been appointed as the time and place for holding the said examination :

Notice is hereby given that you are required to attend at the said time and place, and at any adjournments of the examination which may be ordered, and to bring with you and produce all books, papers, and writings and other documents in your custody or power in any wise relating to the above-named company.

And take notice that if you fail, without reasonable excuse, to attend at such time and place, and at the adjournments of the said public examination which may be ordered, you will be liable to be committed to prison without further notice.

Dated the day of 189 .

Official Receiver in Companies Liquidation.
(Address.)

[Title No. 1.] (5.)

No. 43.

Before .

Upon the application of the Official Receiver the Court hereby appoints of in the county of to take the examination of at his public examination this day pursuant to Rule 16 of the Companies Winding-up Rules, 1890.

Appointment of shorthand writer to take examination.

Dated this day of 189 .

[Title No. 1.] (6.)

No. 44.

Before .

I, , of , in the county of , the shorthand writer appointed by this Court to take down the examination of , do solemnly and sincerely declare that I will truly and faithfully take down the questions and answers put and given by the said in this matter, and will deliver true and faithful transcripts thereof as the Court may direct.

Declaration by shorthand writer.

Dated this day of 189 .

[Declared before me at the time and place
above mentioned.]

(a) "Director" or "Officer," or as the case may be.

No. 45.

[Title No. 1.] (7.)

Notes
where a
shorthand
writer is
appointed.

Public examination of (a).
Before at the Court, this day of 189 .
The above-named, being sworn and examined at the time and
place above mentioned, upon the several questions following being put
and propounded to him, gave the several answers thereto respectively
following each question, that is to say :—

A.

These are the notes of the public examination referred to in the
memorandum of public examination of, taken before me this
day of 189 .

No. 46.

[Title No. 1.] (8.)

Notes
where
shorthand
writer is
not ap-
pointed.

Public examination of (a).
Before at the Court, this day of 189 .
The above-named, being sworn and examined at the time and
place above mentioned, upon his oath saith as follows :—

A.

These are the notes of the public examination referred to in the
memorandum of public examination of, taken before me this
day of 189 .

No. 47.

[Title No. 1.] (39.)

Report of
refusal to
answer to
satisfac-
tion of
registrars,
&c.

At the [public] examination of (b) held before me this day
of 189, the following question was allowed by me to be put to the
said [].

Q. (c)
The (d) refused to answer the said question.
(or) The (d) answered the said question as follows :—
A. (e)

I thereupon named the day of 189, at as the time
and place for such [refusal to] answer to be reported to the Hon. Mr.
Justice [or His Honour Judge].

Dated this day of 189 .

Registrar.

[or as the case may be].

No. 48.

[Title No. 1.] (41.)

Warrant
against

To X. Y., the officer of this Court [or where warrant issues from a
county court, to the high bailiff and others the bailiffs of the said Court],
and all peace officers within the jurisdiction of the said Court, and to the
governor or keeper of the [here insert the prison].

(a) Mr. an officer [or as the attend for examination.
case may be] of the above-named (c) Here state question.
company. (d) Witness.
(b) e.g. A.B., a person ordered to (e) Here insert answers (if any).

Whereas by evidence taken upon oath, it hath been made to appear to the satisfaction of the Court that by order of the Court, dated the day of 189 , and directed to (a) , he was directed to attend personally at the (b) , and be examined before (c) , which order was afterwards, as hath been duly proved on oath, duly served upon the said (a) [or, that there is probable reason to suspect and believe that the said (a) has absconded and gone abroad [or quitted his place of residence, or] is about to go abroad [or quit his place of residence] with a view of avoiding examination under the Companies Winding-up Act, 1890].

And whereas the said (a) did without good cause fail to attend on the said day of 189 , for the purpose of being examined, according to the requirements of the said order of this Court made on the day of 189 , directing him so to attend.

These are therefore to require you, the said [or high bailiff, bailiffs, and others], to take the said (a) and to deliver him to the governor or keeper of the above-named prison, and you the said governor or keeper to receive the said (a) , and him safely to keep in the said prison until such time as this Court may order.

Dated this day of 189 .

No. 48.

person who fails to attend examination.

[Title No. 1.] (40.)

Whereas the above-named A. B. has duly attended before , and has been publicly examined as to the promotion and formation of the company [or, as the case may be].

And whereas is of opinion that the said A. B. has sufficiently answered the questions put to him, it is hereby ordered that the examination of the said A. B. is concluded.

Dated this day of 189 .

No. 49.

Order that examination is concluded.

[Title No. 1.] (43.)

We, the committee of inspection, being of opinion that Mr. of , the liquidator in the above matter, should have a special bank account for the purpose of (d) hereby apply to the Board of Trade to authorize him to make his payments into and out of the bank.

All cheques to be countersigned by , a member of the committee of inspection, and by for .

Dated this day of 189 .

No. 50.

Application for special bank account.

_____ } Committee of Inspection.

(a) Name of person required to attend.

whom examination is directed to be held.

(b) Place of examination.

(d) Here insert ground of application.

(c) Name or title of officer before

No. 51.

Order for
special
bank
account.

[Title No. 1.] (44.)

You are hereby authorized to make your payments in the above matter into, and out of, the bank.

[Here insert any special terms.]

All cheques to be countersigned by , a member of the committee of inspection, and by

Dated this day of 189 .

By order of the Board of Trade.

To

Liquidator.

No. 52.

Motion to
restrain
advertis-
ment of
order
pending
appeal.

[Title, &c., Nos. 1 and 4.]

That the advertisements of the order dated, &c., to wind up the above-named company be postponed until after the hearing of the appeal from the said order by &c. Upon [here state if sum to be lodged to the credit of a Supreme Court suspense account or otherwise].

[Title, &c., Nos. 1 and 3.]

No. 53.

Summons
to attend
the pro-
ceedings.

on the application of A. B., of, &c. [a contributory or creditor, &c., as the case may be], that he may be at liberty to attend the proceedings under the order to wind up the above-mentioned company, dated the day of 18 , and that the costs of this application and of attending the said proceedings may be borne as this Court may direct.

No. 54.

Order
giving
liberty to
attend
at own
expense.

that the said A. B. and C. D. be at liberty at their own expense to attend the proceedings before the judge, and they are to be entitled upon payment of the costs occasioned thereby to have notice of all such proceedings as they shall by written request desire to have notice of.

[Title, &c., No. 1.]

No. 55.

Applica-
tion by
creditor
or contri-
butory for
inspection
under
s. 156.

That the applicant, his solicitors and agents, may be at liberty at all reasonable times to inspect and peruse the books, papers, and documents of the above-named company in the possession, custody, or power of the liquidator or his solicitors or agents, including therein the books, papers and documents [set out the particular books, &c.] at, &c., and to take copies and abstracts thereof, and extracts therefrom, as the applicant may be advised at his expense. And that the said liquidator upon reasonable notice do produce such books, papers, and documents accordingly (a) [or set out when to be produced.]

(a) The order will provide for the costs of the liquidator, and that the applicant shall pay to the liquidator,

or his solicitors, the costs of such inspection and production; or may reserve the question of costs.

LIQUIDATORS AND SPECIAL MANAGERS.

- (i.) APPOINTMENT AND SECURITY.
- (ii.) POWERS AND DUTIES, &c.
- (iii.) ACCOUNTS, &c.
- (iv.) REMUNERATION AND SOLICITOR'S COSTS.
- (v.) RELEASE UNDER ACT OF 1890.
- (vi.) REMOVAL AND RESIGNATION.

(i.) Appointment and Security.

[Title, &c., No. 1.]

No. 56.

1. I know and am well acquainted with H. J. L. of in the of , and have been acquainted with him for years and upwards.

2. The said H. J. L. is [*set out circumstances shewing capability*], and has been a member of the firm of for the period of .

3. The said H. J. L. is a person of thorough business habits and capabilities, and of the highest integrity, and he is a fit and proper person to be appointed liquidator of the above-mentioned Company, Limited, to conduct the proceedings in the winding-up of the same (either provisionally or permanently).

**Affidavit
of fitness
of pro-
posed
liquidator.**

[Title No. 1.] (34.)

No. 57.

Upon the application of , the Official Receiver of the Court, and upon reading the report of the result of the meetings of creditors and contributories held respectively on the day of 189 , and on the day of 189 , and upon hearing, &c. it is hereby ordered that of be appointed liquidator of the above-named company.

**Order
appointing
liquidator.**

[*If a committee of inspection is also appointed, add—*

And it is further ordered that the following persons be appointed a committee of inspection to act with the liquidator.]

And it is ordered that the said liquidator do within 21 days from the date of this Order give security to the satisfaction of the Board of Trade in the manner provided by the Companies (Winding-up) Rules, 1890.

And notice of this Order is to be gazetted and advertised in the .

[*For a form of recognizance, see now R. S. C. 1883, App. L., No. 21 (a). For form of bond by a guarantee company, see Daniell's Forms, 4th edit., p. 723.*]

[Title, &c., No. 1.]

No. 58.

We, W. B., of, &c., and T. P., of, &c., severally make oath, and say as follows:—

**Affidavit
of sure-
ties.**

1. I, the said W. B., for myself, say that I am worth the sum of

(a) See now R. S. C. 1883, O. 60, r. 4, as to the form of recognizances. Where a guarantee society is surety, a separate bond is entered into by them, and the recognizance is entered into by the

liquidator alone. A form will be supplied by the society. The secretary of the society will in such cases be required to make an affidavit as to the solvency, &c., of the society.

balance, books, papers, estate, or effects], [*or specifically describe the property*] now being in your hands, and to which the said company is entitled [*or otherwise, as the case may be*] [without prejudice to any lien which you may have thereon].

Dated this day of 189 .

(Signed) H. J. L.,
Liquidator.

To (a)
(Address)

[Title No. 1.]

To A. B. & Co.

Take notice that you are hereby required, within days after service hereof, to deliver to me, as the liquidator of the above-named company, at , all deeds, books, papers, letters, copies of letters, and all writings and other documents now being in your possession or power, and to which the said company is *prima facie* entitled. And that such delivery shall be without prejudice to your lien on the said deeds, &c., to be paid out of the first moneys coming into my hands as the said liquidator after providing for the costs and expenses of the winding-up of the said company (such costs to be taxed by the proper taxing-master), and this is not to prejudice any security or charge that may be held by you as against the said company (b)

H. J. L.,
Liquidator.

No. 62.

No. 63.

Notice
that co.'s
solicitor
do deliver
books,
papers,
&c.

[Title, &c., Nos. 1 and 3.]

that H. J. L., the liquidator of, &c., be at liberty to carry on the business of the said company, and generally to manage the same until the day of , or until further order, and for that purpose to draw, accept, make and endorse any necessary bill of exchange or promissory note in the name and on behalf of the said company, and to retain in his hands such sum or sums of money as may be necessary, and generally to do and execute all such other things as may be required in carrying on the said business without the sanction or intervention of the Court.

No. 64.

Summons
for liberty
to carry
on busi-
ness gene-
rally.

[Title, &c., Nos. 1 and 3.]

that H. J. L., the liquidator of, &c., be at liberty to carry on the business of the said company, and [*state here other acts and things to be done by liquidator, and as to continuing account at local bank*], and to do such things and make such sales and purchases as may be necessary or proper in the ordinary course of business.

No. 65.

Another
form to
carry on
business in
ordinary
course.

(a) Name of person to whom notice
is addressed.

(b) See note (d) on p. 518.

No. 66.

[Title, &c., Nos. 1 and 3.]

Another
form to
carry on
business
to certain
extent.

that H. J. L., the liquidator of, &c., be at liberty until further order to carry on the business of the said company so far as may be necessary to [*here set out extent*], and so far as may be necessary for the purpose of selling the business of the said company as a going concern, and to use up the materials, whether manufactured or not, in the company's possession; but the price for any further contract shall not exceed £ , and any contract shall not take more than to execute.

No. 67.

[Title, &c., Nos. 1 and 3.]

Summons
for liberty
to borrow
to carry on
business.

that H. J. L., the provisional liquidator, may, for the purpose of carrying on the business of the company as provided by an order dated, &c., be at liberty to borrow such sum or sums as he may require for the purpose of carrying on the said business, and for, &c. [*state special reasons*], not exceeding in the whole £ , the rate of interest on the amounts so borrowed not to exceed 5 per centum per annum, such amounts so borrowed, with the interest for the same, to constitute a first charge upon all the assets of the said company, subject only to any existing charge thereon. And that the said A. B. may be at liberty to execute all proper instruments for the above purpose. And that the costs, &c.

No. 68.

[Title, &c., Nos. 1 and 3.]

Summons
for liberty
to advance
money for
payment
of ex-
penses.

that H. J. L., the liquidator of, &c., be at liberty to pay into the Bank of England to the credit of the account of the said liquidator of the said company the sum of £ of his own moneys to meet, &c. [*state purpose*], and that the said liquidator may have priority over, &c., and over the moneys secured thereby or otherwise to the extent of £ , and for interest upon the said sum of £ at the rate of £5 per centum per annum from the date of such advance until repayment and for his costs of this application, such costs to be taxed by the taxing-master. And that the said principal sum and interest and the costs of this application may be a charge on the company's assets.

No. 69.

Order or
memo-
randum of
sanction
for certain
acts by
liquidator.

[*Name of judge*] doth hereby sanction [*or, has sanctioned*] the following proceedings being taken by the liquidator of the above-named company, namely [*state the proceedings to be taken, as*], the bringing [*or, instituting*] and prosecuting an action in the name and on behalf of the said company, against [*or, defending an action brought, or, instituted against the said company by*] K. M., of, &c., to recover a debt or sum of £ alleged to be due from [*or, to*] the said K. M. to [*or, from*] the said company, &c.

H. J. H.,
Registrar.

[Title, &c., Nos. 1 and 3.]

on the application of H. J. L., the liquidator of the above-named company, that the conditional agreement dated the day of 18 , entered into between the said H. J. L., of the first part, and C. D. of, &c., of the second part, for, &c. [*describe the agreement*], may be carried into effect. And that the costs of this application may be costs in the above-mentioned matter.

No. 70.

Summons to carry into effect agreement.

[Titles, &c., Nos. 1 and 3.]

that H. J. L., the liquidator of the above-named company, be at liberty to sell by public auction the real and personal estate of the said company comprised in the following particulars, that is to say : (1) All that, &c. (2) All that, &c. (3) All that, &c., free from the incumbrances of such of the incumbrancers thereon as shall consent to such sale and subject to the incumbrances of such of them as shall not consent. And that the said liquidator be at liberty to sell all the remaining real and personal property of the company in England not comprised in the above-mentioned particulars at such times and upon such terms, and either by public auction or private contract, as he shall from time to time think expedient. And that the money to arise by any such sale be paid, &c. And that the costs, &c.

No. 71.

Summons for general liberty to sell land, &c.

[Title, &c., Nos. 1 and 3.]

that H. J. L., the liquidator of, &c., be at liberty to dispose of, either by public auction or private contract, and either with or without reserve, all the goods and chattels now, &c. [*describe same*]. And that the said liquidator be at liberty to employ C. D. of, &c., for the purpose of disposing of the said goods and chattels. And that all proper payments made by the said liquidator, pursuant to the order to be made hereon, be allowed in passing his account. [*If necessary, leave to close the business will be asked.*]

No. 72.

Summons for liberty to dispose of goods.

[Title, &c., Nos. 1 and 3.]

That [*describe property to be sold*] be sold, with the approbation of the judge, free from the incumbrances of the said A. B. on the said property, and that the money to arise by such sale be paid into, &c., subject to further order; and that if such money, or any part thereof, shall arise from real estate sold with the consent of incumbrancers, the money so arising be applied in the first place in payment of what shall appear to be due to such incumbrancers according to their priorities.

No. 73.

Summons to sell with approbation of judge, and consent of incumbrancer.

[Title, &c., Nos. 1 and 3.]

that the conditional contract entered into between H. J. L., the liquidator of, &c., and A. B., of, &c., for the sale to, and the purchase by the said A. B. at the sum of pounds, of the said company's rights and interests in, &c., which contract is contained in [*state how contract*

No. 74.

Summons for approval

No. 74.
—
**of con-
ditional
contract
for sale.**

made], be carried into effect. And on the said A. B. declaring himself content with the title to the premises, that the said A. B. do on or before the day of 18 , pay into, &c., the sum of pounds, being the purchase-money as aforesaid, &c., and that, upon such payment being made, the said A. B. may be let into immediate possession of the, &c., &c. And that, upon such payment being made, the said H. J. L. may join in and execute a proper conveyance under the seal of the said company of the said, &c., &c., to the said A. B., such conveyance to be settled by the judge in case the parties differ.

No. 75.
—
**Summons
for ap-
proval of
convey-
ances on
sale.**

[*Titles, &c., Nos. 1 and 3.*]

that H. J. L., the liquidator of, &c., be at liberty to execute the indentures herein mentioned, and also to affix the seal of the said Company, Limited, to the same, such several indentures being made between the several persons as parties thereto hereinafter mentioned, that is to say: (1.) The conveyance of, &c., between, &c. (2.) The conveyance of, &c. (3.) The assignment of, &c.

No. 76.
—
**Summons
for liberty
to bring
action.**

[*Title, &c., Nos. 1 and 3.*]

that H. J. L., the liquidator of, &c., be at liberty to institute an action in the High Court of Justice against, &c., for the purpose of recovering, &c., due for, &c., and to prosecute such action up to giving notice of trial, but after such notice shall have been given no further steps being taken in this action without further leave of the judge.

No. 77.
—
**Summons
for liberty
to defend
action.**

[*Title, &c., Nos. 1 and 3.*]

that H. J. L., the liquidator of, &c., be at liberty, on behalf of the above-named company, to take all necessary and proper proceedings as he may be advised by way of defence in the action of, &c., but so that the said A. B. shall not without leave of the judge proceed to trial in such action. And that the costs, &c.

No. 78.
—
**Summons
for leave
to con-
tinue
action.**

[*Title, &c., Nos. 1 and 3.*]

that H. J. L., the liquidator of the above-named company, may be at liberty, notwithstanding the order to wind up, dated , to continue and prosecute the action, 18 , No. , commenced by the above-named company in the Division against C. D. of, &c., and that the costs of this application may be costs in the above matters.

No. 79.
—
**Summons
for liberty
to prove
in bank-
ruptcy.**

[*Title, &c., Nos. 1 and 3.*]

that H. J. L., the liquidator of, &c., be at liberty to make the usual proofs in bankruptcy against any person or persons indebted to the said company who already is or are or shall be adjudicated bankrupt, and to do generally such acts as may be necessary for protecting the estate of the said company. And that the costs, &c.

[Title, &c., Nos. 1 and 3.]

that H. J. L., the liquidator of the above-named company, may be at liberty to appear by counsel and oppose the appeal of C. D., plaintiff in the action of, &c., from the judgment, dated the, &c. [or "to take all proceedings by way of appeal from the order, dated, &c., made in, &c."]. And that the costs, &c.

No. 80.

Applica-
tion by
liquidator
for leave
to appeal.

(iii.) Accounts, &c.

(75.)

No. of Company _____

LIQUIDATOR'S STATEMENT OF ACCOUNT.

Pursuant to Section 15 of the Companies (Winding-up) Act, 1890.

Name of Company _____

Nature of proceedings (whether wound
up by the Court, or under the super-
vision of the Court, or voluntarily) }

Date of commencement of winding-up _____

Date to which statement is brought down _____

Name and address of Liquidator _____

No. 81.

Liqui-
dator's
statement
of account
under s. 15
of 1890
Act.

LIQUIDATOR'S STATEMENT OF ACCOUNT.

Pursuant to Section 15 of the Companies (Winding-up) Act, 1890.

REALIZATIONS.

Date.	Of whom received.	Nature of Assets realized.	Amount.		
			£	s.	d.

DISBURSEMENTS.

Date.	To whom paid.	Nature of Disbursements.	Amount.		
			£	s.	d.

NOTE.—No balance should be shewn on this account, but only the total realizations and disbursements, which should be carried forward to the next account.

No. 81.

ANALYSIS OF BALANCE.

	£	s.	d.
Total Realizations			
„ Disbursements			
Balance	£		
The balance is made up as follows:—			
1. Cash in hands of Liquidator	£	s.	d.
2. Amounts invested by Liquidator (as per separate account herewith) Less amounts realized from same			
Balance of amount invested	£	s.	d.
3. Total payments into Bank, including balance at date of commencement of winding-up (as per Bank Book)			
Total withdrawals from Bank			
Balance at Bank			
Total balance as shewn above	£		

NOTE.—The Liquidator should also state:—

- | | |
|---|---------------------|
| (1.) The amount of the estimated assets and liabilities at the date of the commencement of the winding-up | { Assets . . . £ |
| (2.) The general description and estimated value of outstanding assets (if any) | { Liabilities . . £ |
| (3.) The causes which delay the termination of the winding-up | { |
| (4.) The period within which the winding-up may probably be completed | { |

(77.)

No. 82.

Affidavit
verifying
liqui-
dator's
statement
of account.

I, H. J. L., of _____, the Liquidator of the above-named company, make oath and say:—

That **the account hereunto annexed marked "B" contains a full and true account of my receipts and payments in the winding up of the above-named company from the _____ day of _____ 18____, to the _____ day of _____ 189____ inclusive, *and that I have not nor has any other person by my order or for my use during such period received any moneys on account of the said company *other than and except the items mentioned and specified in the said account.*

Sworn at, &c.

* NOTE.—If no receipts or payments, strike out the words in italics.

(75B.)

No. 83.

H. J. L., the liquidator of the above-named company, in account with the estate.

Liquidator's trading account.

Receipts.

Payments.

Dr.

Cr.

Date.		£	s.	d.	Date.		£	s.	d.
-------	--	---	----	----	-------	--	---	----	----

(Date)

Liquidator.

(75c.)

No. 84.

I hereby certify that a dividend (or composition) of in the £ was declared payable on and after the day of 18 , and that the creditors whose names are set forth below are entitled to the amounts set opposite their respective names, and have been paid such amounts except in the cases specified as unclaimed.

List of dividends or composition.

Liquidator.

Dated the day of 189 .
To the Board of Trade.

Surname.	Christian Name.	Amount of Proof.			Amount of Dividend (or Composition).					
					Paid.			Unclaimed.		
		£	s.	d.	£	s.	d.	£	s.	d.

(75D.)

No. 85.

I hereby certify that a return of surplus assets was declared payable to contributories on and after the day of 189 , at the rate of per share, and that the contributories whose names are set forth below are entitled to the amounts set opposite their respective names, and have been paid such amounts except in the cases specified as unclaimed.

List of amounts paid or payable to contributories.

Liquidator.

Dated the day of 189 .
To the Board of Trade.

Surname.	Christian Name.	No. of Shares.	Amount returned on Shares.					
			Paid.			Unclaimed.		
			£	s.	d.	£	s.	d.

No. 86.

**Certificate
by com-
mittee as
to audit.**

[*Title No. 1.*] (76.)

We, the undersigned, members of the committee of inspection in the winding up of the above-named company, hereby certify that we have examined the foregoing account with the vouchers, and that to the best of our knowledge and belief the said account contains a full, true, and complete account of the liquidator's receipts and payments.

Dated this day of 189 .

A. B.)
C. D.) Committee of Inspection.
E. F.)

No. 87.

**Affidavit
verifying
liqui-
dator's
account.**

(*See Form 82.*)

No. 88.

**Affidavit
verifying
liqui-
dator's
trading
account.**

[*Title.*] (81.)

I, , the liquidator of the above-named company, make oath and say that the account hereto annexed is a full, true, and complete account of all money received and paid by me or by any person on my behalf in respect of the carrying on of the trade or business of the company, and that the sums paid by me as set out in such account have, as I believe, been necessarily expended in carrying on such trade or business.

Sworn, &c.

Liquidator.

No. 89.

[*Title No. 1.*] (82.)

**Affidavit
verifying
account of
unclaimed,
&c., funds.**

I, , of , make oath and say that the particulars entered in the statement hereunto annexed, marked A., are correct, and truly set forth all money in my hands or under my control, representing unclaimed or undistributed assets of the above company, and that the amount due by me to the Companies Liquidation Account in respect of unclaimed dividends and undistributed funds is £ .

(*Signature.*)

No. 90.

[*Title No. 1.*] (85.)

**Affidavit
by special
manager
verifying
account.**

1. The account hereunto annexed marked with the letter A., produced and shewn to me at the time of swearing this my affidavit, and purporting to be my account as special manager of the estate or business of the above-named company, contains a true account of all and every sums and sum of money received by me or by any other person or persons by my order or to my knowledge or belief for my use on account or in respect of the said estate or business.

2. The several sums of money mentioned in the said account hereby verified to have been paid or allowed have been actually and truly so paid and allowed for the several purposes in the said account mentioned.

3. The said account is just and true in all and every the items and particulars therein contained, according to the best of my knowledge and belief.

RECEIPTS.

Date.	PARTICULARS.	Total.			Drawn from Bank.			Debts Collected.			Property Realized.			Receipts from Securities held by Creditors.			Calls.			Other Receipts.		
		£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.

PAYMENTS.

Date.	PARTICULARS.	Voucher Nos. (in red).			Total.			Paid into Bank.			Board of Trade and Court Fees.			Law Costs of Petition.			Law Costs after Winding-up Order.			Remuneration of Manager and Liquidator.			Official Receiver's Commission Distributed in Dividend or Paid to Contributors.			Charges of Auctioneer, Accountant, Shortland Writer, &c., as taxed.			Notice in Gazette and Local Papers.			Incidental Expenses, including Possession.			Preferential Creditors and Rent.			Payments to redeem Securities.			Dividends paid.			Repayments to Contributors.			Other Payments.																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																													
		£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																	
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No. 91.

Form of cash-book to be kept by liquidator.

No. 92.

Summons
to proceed
on liqui-
dator's
account.

UNDER ACT OF 1862.

[Title, &c., Nos. 1 and 3.]

On the part of the liquidator to proceed on his [here state number of account] account in these matters.

No. 93.

Affidavit
of liqui-
dator in
support of
his ac-
count, and
as to sure-
ties (a).

[Title, &c., No. 1.]

1. The account marked with the letter A. produced and shewn to me at the time of swearing this my affidavit, and purporting to be my account of the receipts and payments by me as the said liquidator, from the day of , 18 , to the day of , 18 , both inclusive, contains a true account of all and every sum or sums of money [state as to interest, &c.] received by me or [allowed to me or received by or allowed to] any other person or persons by my order, or to my knowledge or belief, for my use on account, or in respect of the said company, except what is included as received in my former account [or accounts] sworn by me.

2. The several sums of money mentioned in the said account, hereby verified to have been paid and allowed, have been actually and truly so paid and allowed for the several purposes in the said account mentioned.

3. The said account is just and true in all and every the items and particulars therein contained, according to the best of my knowledge and belief.

4. W. X. and Y. Z. , the sureties named in the recognizance dated the of , 18 , are both alive (b), and neither of them has become bankrupt or insolvent (c).

(a) See O. 50, r. 22, as to this form being used.

(b) Formerly the words "and resident in Great Britain" followed here.

(c) In the case of a guarantee society,

this clause will be modified by stating that the society, to the best of his knowledge, information, and belief, is solvent and able to pay its liabilities.

Liquidator's
account
under Act
of 1862 (a).

The [] account of A. B., the liquidator appointed in this matter pursuant to an order, &c. (To accord with the order.)
[Title, No. 1.]
REAL ESTATE—RECEIPTS.

No. of Item.	Date when received.	Tenants' Names.	Description of Premises.	Annual Rent.		Arrears due at .		Amount due at .		Amount received.		Arrears remaining due.		Observations.
				£	s.	d.	£	s.	d.	£	s.	£	s.	

PAYMENTS AND ALLOWANCES ON ACCOUNT OF REAL ESTATE.

No. of Item.	Date of Payment or Allowance.	Names of Persons to whom paid or allowed.	For what purpose paid or allowed.	Amount.		
				£	s.	d.

RECEIPTS ON ACCOUNT OF PERSONAL ESTATE.

No. of Item.	Date when received.	Names of Persons from whom received.	On what Account received.	Amount received.	No. of Item.	Date when paid or allowed.	Names of Persons to whom paid or allowed.		For what purpose paid or allowed.	Amount paid or allowed.
							£	s.		

PAYMENTS AND ALLOWANCES ON ACCOUNT OF PERSONAL ESTATE.

SUMMARY.

Amount of balance due from liquidator on account of real estate on last account	£	s.	d.	£	s.	d.
Amount of receipts on the above account of real estate	£	s.	d.	£	s.	d.
Balance of last account paid into Court	£	s.	d.	£	s.	d.
Amount of payments and allowances on the above account of real estate	£	s.	d.	£	s.	d.
Amount of liquidator's costs of passing this account as to real estate	£	s.	d.	£	s.	d.
Balance due from the liquidator on account of real estate	£	s.	d.	£	s.	d.
Amount of balance due from liquidator on last account of personal estate	£	s.	d.	£	s.	d.
Amount of receipts on the above account of personal estate	£	s.	d.	£	s.	d.
Balance of last account paid into Court	£	s.	d.	£	s.	d.
Amount of payments and allowances on the above account of personal estate	£	s.	d.	£	s.	d.
Amount of liquidator's costs of passing this account as to personal estate	£	s.	d.	£	s.	d.
Balance due from the liquidator on account of personal estate	£	s.	d.	£	s.	d.

(c) By R.S.O., 1883, r. 23, the rules as to receivers' accounts are to apply to liquidators, and, by r. 19, accounts are to be in this form with such variations as circumstances may require.

No. 95.

Summons
by liqui-
dator to
retain
money on
account of
remunera-
tion.

(iv.) Remuneration and Solicitor's Costs.

[Title, &c., Nos. 1 and 3.]

On the part of H. J. L., the liquidator of the above-named company, that out of the assets of the said company he may be at liberty to retain and pay to himself the sum of £ on account of his remuneration as such liquidator.

No. 96.

Affidavit
of clerk in
support of
liquida-
tor's re-
munera-
tion
account.

[Title, &c., Nos. 1 and 3.]

I, , of , clerk to , the liquidator of the above-named company, make oath and say as follows:—

1. It has been and is the rule and practice in the office of the said liquidator for all persons engaged upon the affairs of the said company (including the said liquidator himself), to enter into diaries the particulars of all work done by them in respect of the company, and the time occupied in doing the work, and for such entries to be made on the day the work is done, or on the day following, and the paper writing now produced and shewn to be marked , contains to the best of my belief a true statement of the time devoted by the said liquidator and his clerks to the affairs of the said company, between the day of and the day of .

In such statement the days on which work was done in respect of the company are set forth in the column, and opposite to the date the particulars of the time occupied in doing the work are set forth in the remaining columns. As to the time of the liquidator in the and columns. As to the time of the 1st class clerks in the and columns. As to the time of the 2nd class clerks in the column. And as to the time of the 3rd class clerks in the column.

The said statement is divided into two parts; part 1 comprises time employed in attending in Court or at judge's chambers; part 2 comprises all other time, but does not comprise any time in attending in Court or at judge's chambers.

2. I say that the said statement corresponds in all its particulars with the entries made by the said liquidator and his clerks in their diaries according to the rule and practice hereinbefore mentioned, as I know from having compared the statement with the said diaries.

No. 97.

Exhibit
referred
to in
preceding
affidavit.

[Title No. 1.]

Statement of time devoted to the affairs of the company by the liquidator and his clerks, between the day of and the day of 189 .

Date.	Time of Liquidator.	Time of 1st Class Clerks.	Time of 2nd Class Clerks.	Time of 3rd Class Clerks.
-------	---------------------	---------------------------	---------------------------	---------------------------

PART I.

Time employed in attending in Court or at the Judge's Chambers.

PART II.

Time employed in any other manner.

[Title, &c., No. 1.]

I, _____, of _____, chartered accountant, the liquidator of the above-named company, make oath and say as follows :—

1. I have read the affidavit of _____ sworn the _____ day of _____, and I say that the statements contained in such affidavit as to the rule and practice in my office are true.

2. The paper writing marked _____ now produced and shewn to me (being the exhibit referred to in the said affidavit), contains a true and correct statement of the time devoted by me and my clerks to the affairs of the above-named company between the _____ day of _____ and the _____ day of _____. The whole of such time has been necessarily and diligently employed solely upon the affairs of the company, and no part of the same has been or will be charged to any other company or person.

3. The whole of the time appearing by the said statement to have been devoted by me personally to the affairs of the company was employed upon matters proper to engage my attention, and which could not properly be entrusted to clerks, and the whole of the time appearing to have been devoted by each class of clerks was employed upon matters proper to receive the attention of such clerks, and which ought not to have been entrusted to clerks of any other class.

_____ it is ordered that the remuneration of the said H. J. L. as liquidator of the above-named company be assessed, and that it be referred to the taxing master to tax the costs of the said H. J. L. from the foot of the taxation directed by the said order, dated the _____ day of _____. And it is further ordered that the said H. J. L. be at liberty to deduct such remuneration and pay the said costs when so taxed, and be allowed such payments respectively, in his accounts, and [any other payments]. Liberty to apply, &c.

No. 98.

Affidavit
of liqui-
dator in
support
of his re-
munera-
tion
account.

No. 99.

Order as
to remun-
eration
being
assessed
and paid.

_____ that out of the sum of £ _____, now standing in, &c., the sum of £ _____, being the ascertained amount of the said liquidator's remuneration, be paid to the said H. J. L., as such liquidator. And it is ordered that the costs of the said liquidator, including the costs of and consequent upon this application, and all subsequent costs to the final winding up of the said company, and the costs of, &c., be taxed by, &c.

No. 100.

Order for
payment
of remun-
eration
and to tax
costs, &c.

[Title, &c., Nos. 1 and 3.]

_____ that, &c., be at liberty to pay to his solicitors, Messrs. _____, of _____, &c., the sum of £ _____ on account of their costs, charges, and expenses of and incidental to the winding up of, &c., such payment to be made without prejudice to the taxation of such costs, charges, and expenses. And that the costs, &c.

No. 101.

Summons
for liberty
to pay
costs
before
taxation.

No. 102.

Order for
taxation
and pay-
ment of
costs.

Upon the application of the liquidator of the said company, and upon hearing the solicitor for the applicant, and upon reading [*enter evidence*]: Refer it to the taxing master to tax the applicant's costs, charges, and expenses incurred by him in these matters as such liquidator as between solicitor and client from the to the , including therein the costs of this order; (a) but in taxing such costs, charges, and expenses, the taxing master is to have regard to any sums of money received in respect of costs of compromise with any contributories or otherwise. And it is ordered that such costs, charges, and expenses, when taxed, be allowed and paid out of the assets of the said company, as and when the judge gives directions for that purpose [or be retained by the liquidator out of the said estate of the company].

No. 103.

Order to
tax and
pay costs
on change
of liqui-
dator's
solicitor.

It is ordered that it be referred to the proper taxing master to tax the costs, charges, and expenses of the said H. J. L., as such liquidator as aforesaid, during the time when the said applicants were his solicitors, from the day of down to the day of , when the now solicitors of the said liquidator were appointed, including therein the costs of this application, and of this order, and in taxing such costs the taxing master is to have regard to any sums of money received in respect of costs of compromise with any contributory or otherwise. And it is ordered that the amount of such costs, charges, and expenses, when so taxed, be paid by the said liquidator out of the assets of the company.

No. 104.

Affidavit
of solicitor
as to
receipt of
costs.

[*Title, &c., No. 1.*]

No sum of money whatever has been received by me, or by any person or persons on my behalf, on account of any compromise or otherwise in respect of or on account of the costs included in the bill of the said liquidator of the above-named company, under the order dated the day of , 188 .

No. 105.

Notice to
creditors
and con-
tribu-
tories of
intention
to apply
for release.

(v.) Release under Act of 1890.

[*Title No. 1.*] (78.)

Take notice that I, the undersigned Official Receiver and liquidator of the above-named company, intend to apply to the Board of Trade for my release, and further take notice that any objection you may have to the granting of my release must be notified to the Board of Trade within twenty-one days of the date hereof.

A summary of my receipts and payments as Official Receiver and Liquidator is hereunto annexed.

Dated this day of 189 .

Official Receiver and Liquidator.
(*Address.*)

To

(a) If on dissolution, substitute the words "from the foot of the last tax-

tion, including therein the final order to dissolve the above company."

NOTE.—It is provided by section 4 (4) and section 22 (4) of the Companies (Winding-up) Act, 1890, that upon the release of a liquidator the Official Receiver shall become liquidator for the purpose of dealing with any matters which may subsequently arise.

Section 22 (3) of the Companies (Winding-up) Act, 1890, enacts that “An order of the Board releasing the liquidator shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the company, or otherwise in relation to his conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.”

No. 105.

[Title No. 1.] (79.)

No. 106.

I, H. J. L., the liquidator of the above-named company, do hereby report to the Board of Trade as follows:—

1. That the whole of the property of the company has been realized for the benefit of the creditors and contributories [and a dividend to the amount of shillings in the £ has been paid as shewn by the statement hereunto annexed, and a return of in the £ has been made to the contributories of the company].

Applica-
tion by
liquidator
to Board
of Trade
for release.

[or, That so much of the property of the company as can, according to the joint opinion of myself and the committee of inspection, hereunto annexed in writing under our hands, be realized without needlessly protracting the liquidation, has been realized, as shewn by the statement hereunto annexed, and a dividend to the amount of shillings has been paid]; (a)

2. I therefore request the Board of Trade to cause a report on my accounts to be prepared, and to grant me a certificate of release.

Dated this day of 189 .

H. J. L., Liquidator.

(a) Add if necessary, “That the rights of the contributories between themselves have been adjusted.”

No. 107.

Statement
to accom-
pany
notice of
applica-
tion for
release.

[Title No. 1.] (71.)

Dr.

Statement shewing position of company at date of application for release.

Cr.

	Estimated to produce per company's statement.			Receipts.		Payments.			
	£	s.	d.	£	s.	£	s.	d.	d.
To total receipts from date of winding-up order, viz. :— (State particulars under the several headings specified in the Statement of Affairs.)						By Board of Trade and Court fees			
Receipts per trading account						Law costs of petition			
Other receipts						Other law costs			
Total						Liquidator's remuneration, viz. :—			
						per cent. on £ assets realized	£	s.	d.
						per cent. on £ assets distributed in dividend			
Less : Payments to redeem securities						Special managers' charges	£	s.	d.
Costs of execution						Person appointed to assist in preparation of Statement of Affairs			
Payments per trading account						Auctioneer's charges as taxed			
						Other taxed costs			
						Costs of possession			
						Costs of notices in Gazette and other local papers			
						Incidental outlay			
						Total cost of realization	£	s.	d.
Net realizations						Creditors, viz. :—			
						(a) Preferential			
Amounts received from calls on contributories						(a) Unsecured: dividend of £. d. in the £ on £			
						The estimate of amount expected to rank for dividend was £			
						Amount returned to contributories			
						Balance			
						(a) State number of creditors.			

Assets not yet realized including calls estimated to produce £
(Add here any special remarks the liquidator thinks desirable.)

Creditors can obtain any further information by inquiry at the office of the liquidator.

Dated this 189 .

(Signature of Liquidator.)

(Address.)

(vi.) Removal and Resignation.**No. 108.**

the judge doth hereby appoint the said H. J. L. liquidator of the above-mentioned company in the place of the said C. D., deceased, and that the said E. F. and G. H., as the legal personal representatives of the said C. D., be at liberty to pass the final account of the said C. D. as such liquidator as aforesaid, and pay the balance (if any) found due upon such account, into the Bank of England, to the credit of, &c., as directed by the order in this matter, dated the day of . And that upon payment in of such balance as aforesaid, the recognizance, dated the day of , entered into by the said C. D. and K. L. and M. N. be discharged. [*Rest of order same as order on appointment. See form No. 57.*]

Order under Act of 1862 appointing liquidator where one deceased. Executor to pass account.

and the said H. J. L., by his solicitor, desiring to retire from the office of liquidator of the said company, the judge doth hereby appoint C. D. of , in the City of , liquidator of the said company in his place. And it is ordered that the said C. D. do on or before [*accounts*]. And it is ordered that all monies [*payment of money into bank*]. And it is ordered that the said H. J. L. do on or before the day of , leave his final account as such liquidator at, &c., and pass the same, and within days from, &c., pay the balance (if any) which shall be certified to be due from him into the Bank of England to the account of, &c. And it is ordered that upon such payment by the said H. J. L., the said recognizance, dated day of , be vacated.

No. 109.

Order under Act of 1862 upon liquidator resigning.

[Title No. 1.]

it is ordered that of, &c., appointed liquidator of, &c., by an order dated the , be, and he is hereby discharged or removed, as such liquidator of the said company. And it is ordered that the said do within fourteen days from the date of this order pass his final account as liquidator of the said company. And it is ordered that a proper person be appointed liquidator of the said company in the place and stead of the said .

No. 110.

Order removing liquidator.

[Title No. 1.]

Notice is hereby given that Mr. Justice has, by an order dated the day of , 18 , removed , of, &c., from being liquidator of the above-named company.

And notice is hereby also given that [*here insert notice as to meeting for appointment of new liquidator. See form, supra; or under Act of 1862 of date fixed for appointment.*]

Dated, &c.

No. 111.

Notice of removal of liquidator and as to appointment of another.

No. 112.

Applica-
tion for
liberty to
proceed
with
action
against
company.

ACTIONS, EXECUTIONS, DISTRESS, Etc.

[Title, &c., Nos. 1, 3, or 4.]

that notwithstanding an order, dated the day of , 18 , whereby it was ordered that the above-named company should be wound up by this Court under the provisions of the Companies Act, 1862 to 1890, A. B. the plaintiff, in an action *B. v. C.* 188 B. No. , brought in the Division of the High Court of Justice, may be at liberty to proceed with the said action, he undertaking not to take any steps to enforce any judgment he may obtain without leave of the Court or a judge, and that the costs of the applicant relating to this application may be costs in the said action, and that the costs of the liquidator of the above-named company (upon whom it is intended to serve this notice) of this application may be costs in the winding-up of the above-named company.

No. 113.

Order
giving
liberty to
debenture-
holders to
bring
action.

that the applicant, A. B., may be at liberty to commence and prosecute an action against the above-named company in this Court and Division for the recovery of, &c. [*set out amount and describe security*]. But such action is not to be prosecuted beyond giving notice of trial therein without further leave of the judge first obtained.

No. 114.

Applica-
tion to
restrain
sheriff
selling.

[Title, &c., Nos. 1 and 4.]

that the sheriff of, &c., be restrained from selling any goods of the said company seized or to be seized by him under the execution issued on a judgment, &c. [*describe*], or under any execution to be issued under any judgment to be obtained in the said action by, &c.

No. 115.

[Title, &c., Nos. 1 and 4.]

Applica-
tion to
restrain
County
Court exe-
cution.

that the high bailiff of the County Court of, &c., do forthwith withdraw from the premises of the above-named company entered upon by him pursuant to a warrant of execution directed to him and issuing out of the County Court of, &c., under a judgment obtained by A. B. in an action commenced by him against the said company as in the affidavit of C. D., of, &c., mentioned. And that the said high bailiff do deliver up the possession of the said premises to the liquidator of, &c. And that the said action be transferred from the said County Court of, &c., aforesaid to, &c.

No. 116

Order
giving
execution
creditor
before
w.-u. first
charge,

declare that the Court is of opinion that A. B. is entitled to the same charge on the assets of the company in the hands of the sheriff as if such assets had been sold by the sheriff under the writ of *fi. fa.* before the petition for winding up the company was presented; and let the sheriff go out of possession and deliver the assets in his possession to the liquidators; and order the liquidators to sell forthwith sufficient assets to raise the amount due to A. B. in respect of the bills for £ , and interest at 4 per cent., and costs, and out of the proceeds

of such sale pay A. B. the amount of his judgment debt, and interest at 4 per cent. thereon from the signing of the judgment, and costs, and the costs of both motions, and to pay the costs of the sheriff. Liberty to A. B. to apply in case the liquidators do not sell forthwith. [See 8 Ch. D., p. 192.]

No. 116.
—
**&c., and
for sale
and pay-
ment.**

[Title, &c., Nos. 1 and 4.]

to restrain until the hearing of the petition in these matters or until further order, A. B., of, &c., from issuing execution on a judgment obtained against the above-named company for the sum of £ in an action of as in the affidavit of mentioned.

No. 117.
—
**Applica-
tion to
restrain
issue of
execution.**

[Title, &c., Nos. 1 and 4.]

be restrained until the hearing of the said petition or further order from continuing any further proceedings under the judgment and execution obtained against the said company, &c. [*and adapt so far as may be necessary from form No. 114, supra.*]

No. 118.
—
**Motion to
restrain
further
proceed-
ings under
judgment.**

[Title, &c., Nos. 1, 3, or 4.]

that H. J. L., the liquidator of the above-named company, do pay to the applicant, C. D., on or before the, &c., the sum of £ [*state what rent due*] in respect of the [*describe premises*] held by the above-named company of the applicant under and by virtue of [*set out indenture or agreement*] made between, &c. And that in default of such payment the applicant be at liberty to take possession of the said premises with the fixtures and fittings therein. And that the sum of £ , being the assessed costs of the said applicant of and incidental to this application, be paid by the said company to the said applicant.

No. 119.
—
**Applica-
tion that
liquidator
pay rent
to land-
lord or
give up
possession.**

[Title, &c., Nos. 1, 3, or 4.]

that the applicant, A. B., be at liberty within days from the date of this order to distrain against [*describe the goods, chattels, and effects*] of the above-named Company, Limited, for the sum of £ , such sum being an apportioned amount of months' rent between the day of (the date when the said company went into liquidation) and the day of , for the hereditaments and premises situate in, &c., due on the said day of from the said company to the applicant, A. B., under and by virtue of the indenture of lease of, &c., without prejudice to any question which may hereafter be raised. And that the costs of the said A. B. of and incident to this application be paid by the said company to the said A. B.

No. 120.
—
**Applica-
tion for
liberty to
distrain.**

[Title, &c., Nos. 1 and 4.]

to restrain until the hearing of the petition in these matters, or until further order, C. D., of, &c., from selling any goods of the above-named company distrained by him, or otherwise proceeding with the distress levied by him on the said goods.

No. 121.
—
**Applica-
tion to
restrain
distress.**

No. 122.

[Title, &c., Nos. 1, 3, or 4.]

Applica-
tion by
mortgagee
for liberty
to sell.

that A. B. may be at liberty to take possession of and remove and sell by private contract or public auction, as he may think fit, &c. [*describe property*] comprised in an indenture of mortgage dated the, &c., and now in the possession of the liquidator of the above-named company, he by his counsel undertaking to account for the proceeds of any such sale in the liquidation if the Court shall so direct. And that the said A. B. may add his costs of this application to his security.

No. 123.

[See *Daniell's Forms*, 4th ed., p. 698.]

Motion to
discharge
restraining
order.

SERVICE OF ORDERS.

No. 124.

[Title, &c., Nos. 1 and 4.]

Applica-
tion for
substituted
service(a).

that service of the summons and an order made by [*judge*] in these matters on the day of , and of a copy of the summons and the order on this application on at , and on the solicitors of the said at [*as the case may be*], may be deemed good and sufficient service upon the said .

MEETINGS OF CREDITORS AND CONTRIBUTORIES.

I. UNDER ACT OF 1890.

First
meetings.

[For forms as to first meetings see under that head.]

No. 125.

[Title No. 1.] (26.)

Notice of
meeting
[general
form].

Take notice that a meeting of creditors [*or contributories*] in the above matter will be held at on the day of 189 , at o'clock in the noon.

Agenda.

Dated this day of 189 .
(b)

(Signed) (c)

Forms of general and special proxies are enclosed herewith. Proxies to be used at the meeting must be lodged not later than o'clock on the day of 189 .

No. 126.

[Title No. 1.] (27.)

Affidavit
of postage
of notices
of meeting.

I, , a (d) , make oath and say as follows:—
1. That I did on the day of 189 , send to each creditor mentioned in the company's statement of affairs [*or to each contributory*

(a) The kind of substituted service which it is proposed to obtain should be clearly stated. The application may be in the alternative.

meeting called.

(c) "Liquidator" or "Official Receiver."

(b) Here insert purpose for which
(d) State the description of the deponent.

mentioned in the register of members of the company] a notice of the time and the place of the (a) in the form hereunto annexed marked "A."

2. That the notices for creditors were addressed to the said creditors respectively, according to their respective names and addresses appearing in the statement of affairs of the company.

3. That the notices for contributories were addressed to the contributories respectively according to their respective names and addresses appearing in the register of the company.

4. That I sent the said notices by putting the same prepaid into the post-office at before the hour of o'clock in the noon on the said day.

[Title No. 1.] (28.)

No. 126.

I, a clerk in the office of the Official Receiver, hereby certify :—
1. That I did on the day of 189 , send to each mentioned in the statement of affairs of the company, a notice of the time and the place of the meeting, in the form hereunto annexed marked "A."

2. That the notices for were addressed to the said according to their respective names and addresses appearing in the statement of affairs of the company.

3. That I sent the said notices by putting the same into [the official letter-bag provided by the Postmaster-General for the office of the Official Receiver] before the hour of 5.30 o'clock in the afternoon of the said day.

Dated the day of 189 .

(Signature.)

No. 127.

Certificate
of postage
of notices
(general).

[Title No. 1.] (29.)

No. 128.

Before at on the day of 189 , at o'clock.
Memorandum.—The (b) meeting of (c) in the above matter was held at the time and place above mentioned; but it appearing that (d) the meeting was adjourned until the day of 189 , at o'clock in the noon, then to be held at the same place.

Memo-
randum of
adjourn-
ment of
first or
other
meeting.

Chairman.

(a) Insert here "general" or "ad-journed general" or "first" meeting of creditors [or contributories as the case may be].

(c) Insert "creditors" or "contri-butories" as the case may be.

(d) Here state reason for adjournment.

(b) "First," or as the case may be.

No. 129.

[Title No. 1.] (31.)

Meeting held at this day of 189 .

List of
creditors
(a) as-
sembled to
be used at
every
meeting.

Number.	Names of creditors (a) present or represented.	Amount of Proof (b).
1		
2		
3		
4		
5		
6		
7		
7	Total number of creditors (b) present or represented	

No. 130.

[Title No. 1.] (73.)

General
proxy.

I, (c) , of , a creditor [or contributory] hereby appoint (d)
to be (e) general proxy in the above matter.
Dated this day of 189 .
(Signed) (f)
(Signature of Witness.)
(Address.)

NOTES.

1. The authorized agent of a corporation may fill up blanks, and sign for the corporation, thus :—
“For the Company.

J. S. (duly authorized under the seal of the Company).”

2. A proxy may be filled up and signed by any person having a general authority in writing to sign. Such person shall sign,
J. S. (duly authorized by a general authority in writing to sign on behalf of [name of creditor]) (g).

Certificate to be signed by person other than Creditor or Contributory filling up the above Proxy.

I, , of , being a [here state whether clerk or manager in the regular employment of the creditor or contributory or a commissioner to

(a) Or “contributories.”

(b) In case of contributories insert “number of shares.”

(c) If a firm, write “we” instead of “I,” and set out the full name of the firm.

(d) Here insert either “Mr. of a clerk, manager, &c., in my regular employ,” or “the Official Receiver in the above matter.” The standing of the person appointed must

be clearly set out.

(e) “My” or “our.”

(f) If a firm, sign the firm’s trading title, and add “by A. B., a partner in the said firm.”

As to signature by agent, see foot-
notes 1 and 2.

(g) The Official Receiver or liqui-
dator may require the authority to
sign to be produced for his inspection.

administer oaths in the Supreme Court], hereby certify that all insertions in the above proxy are in my own handwriting, and have been made by me at the request of the above-named _____ and in his presence, before he attached his signature [*or mark*] thereto.

Dated this _____ day of _____ 189 .

(*Signature.*)

The proxy must be lodged with the Official Receiver or liquidator not later than the day before the meeting at which it is to be used.

[*Title No. 1.*] (74.)

No. 131.

I, (*a*) _____, of _____, a creditor [*or contributory*], hereby appoint (*b*) _____ as (*c*) _____ proxy at the meeting of creditors [*or contributories*] to be held on the _____ day of _____ 189 , or at any adjournment thereof, to vote (*d*) _____.

Special proxy.

Dated this _____ day of _____ 189 .

(Signed) (*e*) _____

(*Signature of Witness.*)

(*Address.*)

NOTES.

1. A creditor or contributory may give a special proxy to any person to vote at any specified meeting or adjournment thereof on all or any of the following matters:—

- (*a.*) For or against the appointment or continuance in office of any specified person as liquidator or as member of the committee of inspection:
- (*b.*) On all questions relating to any matter, other than those above referred to, arising at a special meeting or adjournment thereof.

2. The authorized agent of a corporation may fill up blanks and sign for the corporation, thus:—

“For the

Company.

J. S. (duly authorized under the seal of the Company).”

3. A proxy given by a creditor or contributory may be filled up and signed by any person having a general authority in writing to sign for such creditor or contributory. Such person shall sign,

J. S. (duly authorized by a general authority in writing to sign on behalf of [*name*]) (*f*).

Certificate to be signed by person other than Creditor or Contributory filling up the above Proxy.

I, _____, of _____, being a [*here state whether clerk or manager in the regular employment of the creditor or contributory or a commissioner to administer oaths in the Supreme Court*], hereby certify that all insertions in the above proxy are in my own handwriting, and have been

(*a*) If a firm, write “we” instead of “I,” and set out the full name of the firm.

(*b*) Here insert either “Mr. _____ a clerk, manager, &c., in my regular employ,” or, “the Official Receiver in the above matter.” The standing of the person appointed must be clearly set out.

(*c*) “My” or “our.”

(*d*) Here insert the word “for,” or

the word “against,” as the case may require, and specify the particular resolution.

(*e*) If a firm, sign the firm’s trading title, and add “by A.B., partner in the said firm.”

As to signature by agent, see footnotes 1 and 2.

(*f*) The Official Receiver or liquidator may require the authority to sign to be produced for his inspection.

No. 131. made by me at the request of the above-named and in his presence,
before he attached his signature [*or mark*] thereto.

Dated this day of 189 .

(*Signature.*)

The proxy must be lodged with the Official Receiver or Liquidator not later than the day before the meeting at which it is to be used.

II. WHEN ORDERED BY THE JUDGE UNDER ACT OF 1862 (a).

No. 132.

[*Title No. 1.*]

Notice [*or advertise-
ment*] of
meeting of
creditors
**or contri-
butories.**

Notice is hereby given that [*fill in judge*] has directed a meeting of the creditors [*or contributories*] of the above-named company to be summoned pursuant to the above statute, for the purpose of ascertaining their wishes as to [*state the object for which meeting called, unless notice is by advertisement, in which case say,* certain matters relating to the winding up of the said company,] and that such meeting will be held on day, the day of 18 , at o'clock in the noon, at , in the county of , at which time and place all the creditors [*or contributories*] of the said company are requested to attend. [The said judge has appointed H. T., of, &c., to act as chairman of such meeting.]

Dated this day of 18 .

H. J. L.,
Liquidator.

No. 133.

[*Title No. 1.*]

**Appoint-
ment of
proxy to
vote at
meeting.**

I, W. S., of , in the county of , being a creditor [*or contributory*] of the above-named company, hereby appoint , of , as my proxy to vote for me, and on my behalf, at the meeting of the creditors [*or contributories*] of the said company, summoned by direction of [*name of judge*], to be held on the day of and at any adjournment thereof.

As witness my hand this day of 18 .

W. S.

Signed by the said W. S. }
in the presence of }
J. M., of, &c.

No. 134.

[*Title No. 1.*]

**Memo-
randum of
appoint-
ment of
chairman.**

[*Name of judge*] has appointed Mr. H. T., of, &c., one of the creditors [*or contributories*] of the above-named company, to act as chairman of a meeting of the creditors [*or contributories*] of the said company, summoned by direction of the said judge, pursuant to the above statute, to be held on day, the day of 18 , at o'clock in the noon, at , in the county of , and to report the result of such meeting to the said judge.

The said meeting is summoned for the purpose of ascertaining the

(a) See s. 31 of the Act of 1890 as to the application of that Act. Meetings may also, in some cases, be ordered by the judge before a winding-up order is made.

wishes of the creditors [*or contributories*] of the said company as to [*state the object for which meeting called*]; and at such meeting the votes of the creditors [*or contributories*] may be given either personally or by proxy.

Dated this day of 18 .

H. J. H.,
Registrar.

No. 134.

No. 135.

Chair-
man's
report of
result of
meeting.

No. 136.

Proof of
debt.
General
form (i).

Proof of debts by creditors and dividends.

(1) UNDER THE ACT OF 1890.

[*Title No. 1 or 2*] (C. 66.)

I, (a) , of , in the county of , make oath and say:—

(b) That I am in the employ of the under-mentioned creditor, and that I am duly authorized by to make this affidavit, and that it is within my own knowledge that the debt hereinafter deposed to was incurred and for the consideration stated, and that such debt, to the best of my knowledge and belief, still remains unpaid and unsatisfied.

(c) That I am duly authorized, under the seal of the company hereinafter named, to make the proof of debt on its behalf.

1. That the above-named company was, at the date of the order for winding up the same, viz. the day of 189 , and still is justly and truly indebted to (d) in the sum of pounds shillings and pence for (e) , as shewn by the

† {Account endorsed hereon
Account hereto annexed marked "A," } for which sum or any part thereof I say that I have not nor hath (f) or any person by (g) order to my knowledge or belief for (g) use had or received any manner of satisfaction or security whatsoever, save and except the following:—(h)

(a) Fill in full name, address, and occupation of deponent.

If proof made by creditor, strike out clauses (b) and (c). If made by clerk of creditor, strike out (c). If by clerk or agent of company, strike out (b).

(d) Insert "*me* and to C. D. and E. F., my co-partners in trade," if any, or, if by clerk or agent, insert name, address, and description of principal.

NOTE.—In case of a firm, the names of all the partners must be set out in full.

NOTE THIS.

(e) State consideration [*as—Goods sold and delivered by me*] [*and my said partner*] to the company between the dates of [*or, moneys advanced by me in respect of the under-mentioned bill of exchange*] or as the case may be.

† Strike out the words not applicable.

(f) "My said partners or any of

them" or "the above-named creditor," as the case may be.

(g) "My" or "our" or "their" or "his," as the case may be.

(h) Here state the particulars of all securities held, and where the securities are on the property of the company, assess the value of the same, and if any bills or other negotiable securities be held, specify them in the schedule.

N.B.—Bills or other negotiable securities must be produced before the proof can be admitted.

(i) Where the debt proved for exceeds £2, a shilling Companies (Winding-up) stamp must be affixed here, or a postal order for 1s. be sent to the Official Receiver, as otherwise the proof cannot be admitted. Note: The stamp must not be defaced by the creditor.

Bankruptcy or postage stamps cannot be accepted.

No. 136.

Admitted to vote for £ : : this day of 189 . Official Receiver.	Date.	Drawer.	Acceptor.	Amount.	Date due.
Admitted to rank for dividend for £ : : this day of 189 . Official Receiver or Liquidator.	Sworn at in the County of this day of 189 , Before me			Deponent's signature.	

The proof cannot be admitted for voting at the first meeting unless it is properly completed and lodged with the Official Receiver before the time named in the notice convening such meeting.

NOTE.—If space not sufficient, let the particulars be annexed, but where the particulars are on a separate sheet of paper, the same must be marked by the person before whom the affidavit is sworn, thus:—

In the matter of

"This is the account marked 'A.' referred to in the annexed affidavit of sworn before me this day of 189 .

"(Signed) Commissioner or Officer administering Oath."

PARTICULARS OF ACCOUNT REFERRED TO ON OTHER SIDE.

(Credit should be given for Contra Accounts.)

Date.	Consideration.	Amount.			REMARKS. The vouchers (if any) by which the account can be substantiated should be set out here.
		£	s.	d.	

Deponent's signature .
Signature of Commissioner or Officer administering oath .

Debt must be proved.
Form of proof. By whom to be made.
(Rule 98.)
Must contain statement of account.
(Rule 99.)
Secured creditor must set out security.
(Rule 100.)
Before whom proof to be sworn.

INSTRUCTIONS TO CREDITORS AS TO PROOFS.

Rule 96.—Every creditor shall prove his debt.

The proof must be *in the form annexed*, and may be made *by the creditor himself* or by *some person authorized by him*.

A statement of account showing how the amount of the proof is made up should be attached.

The proof must set out whether the creditor holds security for any part of his debt, and the particulars and estimated value of the security, if any.

An affidavit of proof of debt may be sworn before . . . any clerk of an Official Receiver duly authorized in writing by the Court or the Board of Trade in that behalf (Rule of 3rd December, 1892), or before a *Commissioner to administer Oaths*, or before such persons as are mentioned in Section 128 of "The Companies Act, 1862" (*set out below*).

Every proof of debt above two pounds must bear a *Companies (Winding-up) stamp* of the value of *one shilling*. *Bankruptcy or postage stamps cannot be accepted.*

Rule 101.—A creditor shall bear the cost of proving his debt, unless the Court otherwise orders.

Rule 107.—Where a creditor seeks to prove in respect of a bill of exchange, promissory note, or other negotiable instrument or security on which the company is liable, such bill of exchange, note, instrument, or security must, subject to any special order of the Court made to the contrary, be produced to the Official Receiver, chairman of a meeting, or liquidator, as the case may be, and be marked by him before the proof can be admitted either for voting or for any purpose.

Schedule 1. (6).—A person shall not be entitled to vote as a creditor unless he has duly proved a debt to be due to him from the company, and the proof has been duly lodged before the time appointed for the meeting.

Rule 108.—*A proof intended to be used at the first meeting of creditors or at an adjournment thereof shall be lodged with the Official Receiver not later than the time mentioned for that purpose in the notice convening the meeting, or adjourned meeting.*

SECTION 128 OF THE COMPANIES ACT, 1862.

128.—Any affidavit, affirmation, or declaration required to be sworn or made under the provisions or for the purposes of this part of this Act may be lawfully sworn or made in Great Britain or Ireland, or in any colony, island, plantation, or place under the dominion of Her Majesty in foreign parts, before any court, judge, or person lawfully authorized to take and receive affidavits, affirmations, or declarations, or before any of Her Majesty's consuls or vice-consuls in any foreign parts out of Her Majesty's dominions, and all courts, judges, justices, commissioners and persons acting judicially shall take judicial notice of the seal or stamp or signature (as the case may be) of any such court, judge, person, consul, or vice-consul attached, appended, or subscribed to any such affidavit, affirmation, or declaration, or to any other document to be used for the purposes of this part of this Act.

[Title No. 1.] (67.)

I, (a) , of , (b) make oath and say:—

1. That the above-named company was on the day of 189 , and still is justly and truly indebted to the several persons whose names, addresses, and descriptions appear in the schedule endorsed hereon in sums severally set against their names in the sixth column of such schedule for wages due to them respectively as workmen or others in the employ of the company in respect of services rendered by them respectively to the company during such periods as are set out against their respective names in the fifth column of such schedule, for which said sums, or any part thereof, I say that they have not, nor hath any of them had or received any manner of satisfaction or security whatsoever.

Sworn at , in the county
of , this day of
189 .

Before me

(a) Fill in full name, address, and occupation of deponent.

(b) On behalf of the workmen and

E.W.

(Deponent's Signature.)

others employed by the above-named company.

No. 136.

Fee on making proof.

Cost of making proof.

Bills of exchange and promissory notes must be produced.

Proof to be used at meeting must be lodged before meeting.

Time for lodging proof for voting.

Before whom affidavits sworn.

No. 137.

Proof of debt of workmen.

No. 137.

SCHEDULE referred to on the other side.

1. No.	2. Full Name of Workman.	3. Address.	4. Description.	5. Period over which Wages due.	6. Amount due.		
					£	s.	d.

(Signature of Deponent.)

No. 138.

[Title No. 1.] (68.)

Notice of
rejection
of proof.

Take notice, that, as liquidator of the above-named company, I have this day rejected your claim against the company (a) [to the extent of £] on the following grounds :—

And further take notice that, subject to the power of the Court to extend the time, no application to reverse or vary my decision in rejecting your proof will be entertained after the expiration of (b) days from this date.

Dated this day of 189 .

(Signature.)

(Address.)

To

Official Receiver.

No. 139.

[Title No. 1.] (69.)

Notice to
creditors
to declare
dividend.

A (c) dividend is intended to be declared in the above matter. You are mentioned in the statement of affairs, but you have not yet proved your debt.

If you do not prove your debt by the day of 189 , you will be excluded from this dividend.

Dated this day of 189 .

To X. Y.

H. J. L., Liquidator,
(Address.)

No. 140.

[Title No. 1.] (70.)

To persons
claiming
to be cre-
ditors of
intention
to declare
final
dividend.

Take notice that a final dividend is intended to be declared in the above matter, and that if you do not establish your claim to the satisfaction of the court on or before the day of 189 , or such later day as the court may fix, your claim will be expunged, and I shall proceed to make a final dividend without regard to such claim.

Dated this day of 189 .

To X. Y.

H. J. L., Liquidator,
(Address.)

(a) If proof wholly rejected, strike out words underlined.

be. See Rules 111 and 112.

(b) 21 days or 7 days as the case may

(c) Insert here "first" or "second" or "final," or as the case may be.

[Title No. 1.] (72.)

No. 141.

If this dividend be not claimed within six months, application made thereafter must bear a 1s. Companies (Winding-up) stamp, when the amount applied for does not exceed £1, or a 2s. 6d. stamp when the amount exceeds £1.

Notice of
dividend.

[Please bring this Dividend Notice with you.]

Dividend of _____ in the £.

Board of Trade,

Department of the Official Receivers in Companies Liquidation,
33, Carey street, Lincoln's Inn, London, W. C.

189 .

Notice is hereby given, that a _____ dividend of _____ in the pound has been declared in this matter, and that the same may be received at my office, as above, on _____ the _____ day of _____ 189 , or on any subsequent day, except Saturday, between the hours of *eleven and two*.

If you do not attend personally you must fill up and sign the subjoined Forms of *Receipt* and *Authority*, when a cheque or money order payable to your order will be delivered to the person named in the *Authority*. Upon applying for payment, *this notice must be produced entire*, together with any other bills of exchange or other securities held by you.

C. J. Stewart,

To

Senior Official Receiver and Liquidator.

RECEIPT.

No.

189 .

Received of the Official Receiver and Liquidator in the above matter the sum of _____ pounds _____ shillings and _____ pence, being the amount payable to $\frac{\text{me}}{\text{us}}$ in respect of the dividend of _____ in the £ on

$\frac{\text{my}}{\text{our}}$ claim against this company.

(Signature.)

£ : :

AUTHORITY.

SIR,

Please deliver to (a) _____ the cheque or money order for the dividend payable to _____ in this matter.

(Creditor's Signature.)

To the Official Receiver and Liquidator.

Date 189 .

II. UNDER THE ACT OF 1862.

In the matter of, &c.

The creditors of the above-named company are required on or before the _____ day of _____ 18 , to send their names and addresses and the particulars of their debts or claims, and the names and addresses of their solicitors, if any, to _____ of _____, the liquidator of the said company, and if so required by notice in writing from the said liquidator, are by

(a) Insert the name of the person who is to receive the cheque or money order, or the words " $\frac{\text{me}}{\text{us}}$ by post, at _____ my _____ risk," if you wish it sent to you in that way.

No 142.

Advertise-
ment for
creditors.

No. 142.

their solicitors to come in and prove their said debts or claims at the chambers of Mr. Justice at at such time as shall be specified in such notice, or in default thereof they will be excluded from the benefit of any distribution made before such debts are proved.

day, the day of 18, at o'clock in the noon, at the said chambers, is appointed for hearing and adjudicating upon the debts and claims.

Dated this day of 18.

Registrar.

No. 143.

[Title, &c., No. 1.]

**Affidavit
of liqui-
dator as
to debts
and
claims.**

1. I have in the paper writing now produced and shewn to me, and marked with the letter A., set forth a list of all the debts and claims the particulars of which have been sent in to me by persons making claims upon or claiming to be creditors of the said company, pursuant to the advertisement issued in that behalf, dated the 18; and the names and addresses of the persons by whom such claims are made.

2. I have investigated the said debts and claims, and examined the same with the books and documents of the said company, in order to ascertain, so far as I am able, which of such debts and claims are justly due from the said company; and I have, in the first part of the said list, set forth such of the said debts and claims, or parts thereof, as, in my opinion, are justly due from the said company, and proper to be allowed without further evidence; and I have, in the sixth column of the said first part of the said list, set forth the amounts proper to be allowed in respect of such debts and claims; and I believe that such amounts respectively are justly due and proper to be allowed; and I have, in the seventh column of the said first part of the said list, stated my reasons for such belief.

3. I have, in the second part of the said list, set forth such of the said debts and claims as in my opinion ought to be proved by the respective creditors (a).

A.

In the matter, &c.

List of debts and claims of which the particulars have been sent in to the liquidator.

This paper writing, marked A., was produced and shewn to H. J. L., and is the same as is referred to in his affidavit, sworn before me this day of 18.

W. B., &c.

First Part.—Debts and Claims proper to be allowed without further evidence (b).

Serial No.	Names of Creditors.	Addresses and Descriptions.	Particulars of Debt or Claim.	Amount claimed.	Amount proper to be allowed.	Reasons for belief that Amounts are proper to be allowed.
				£ s. d.	£ s. d.	

(a) State if company is insolvent.

(b) N.B.—Care should be taken to arrange the names alphabetically, and the numbers to the names should on no

account be altered subsequently. It will be advisable to keep debts and claims carrying interest in a separate part from those not carrying interest.

No. 144.

**Exhibit
referred
to in pre-
ceding
affidavit.**

Second Part.—Debts and Claims which ought to be proved by the Creditors (*a*).

No. 144.

Serial No.	Names of Creditors.	Addresses and Descriptions.	Particulars of Debt or Claim.	Amount claimed. £ s. d.

In the matter of, &c.

[*place and date*]

No. 145.

SIR,

The debt claimed by you in this matter has been allowed by the judge at the sum of £ [if part only allowed, add: If you claim to have a larger sum allowed, you are hereby required to come in and prove the further amount claimed, &c., as in the next form.]

Notice to creditor of allowance of debt.

I am, &c.,

—, Liquidator.

To Mr. .

[*Title No. 1.*]

No. 146.

You are hereby required to come in and prove the debt claimed by you against the above-named company, by filing your affidavit, and giving notice thereof to me, on or before the day of next; and you are to attend by your solicitor at the chambers of [*name of judge*] at, &c., on the day of 18, at o'clock in the noon, being the time appointed for hearing and adjudicating upon the claim (*a*).

Notice to creditors to come in and prove their debts.

Dated this day of 18 .

R. P. H., Liquidator.

To Mr. S. T.

[*Title, &c., Nos. 1 and 3.*]

No. 147.

that A. B. of, &c., who claims to be entitled to, &c., may be ordered within days after the service on him of the order to be made hereon to deliver to C. D., the liquidator, &c., further and better particulars with dates and items of his said claim against the said company, and that in default of delivery of such particulars with dates and items within the time aforesaid, the said claim may be dismissed with costs.

Summons for better particulars of claim.

(a) See last note.

(b) The affidavit in form 148 carries matters no further than this notice, and sometimes the liquidator is directed to make an addition to this form calling attention to the ground on which the claim is disputed, and requiring the affidavit to meet such ground. This

prevents a useless affidavit being filed. For example, in case of apparently statute barred debts, the following might be added: "Your claim will be disputed, among other grounds, on the ground that it is barred by the Statute of Limitations."

No. 148.

**Affidavit
of creditor
in proof of
debt (b).**

[Title, &c., No. 1.]

1. The above-named company was, on the day of 18 , the date of the order for winding up the same, and is still justly and truly indebted to me in the sum of £ for, &c. [*Describe shortly the nature of the debt, and exhibit any security for it; and in the case of a trade debt exhibit a bill of parcels, and verify the reasonableness of the charges, as in proving a debt in a suit*] (a).

2. I have not, nor hath nor have any person or persons by my order, or to my knowledge or belief, or for my use received the said sum of £ or any part thereof, or any security or satisfaction for the same or any part thereof [*if any security add*], except the said [*describe the security*] hereinbefore mentioned or referred to.

No. 149.

**Affidavit
in proof
of claim of
solicitor
for costs
and
balance
on cash
account.**

[Title, &c., No. 1.]

1. The above-named company was on the day of 18 , the date of the order for winding up the same, and still is justly and truly indebted to me in the sum of £ , being the amount of an account for business done by me as solicitor for and by the order of the said company at the time, and for the charges, mentioned and set forth in the paper writing now produced and shewn to me and marked “ .”

2. The said company was also at the date of the said order, and still is, justly and truly indebted to me in the sum of £ , being the amount of an account for business done by me as solicitor for, and by the order of, the said company at the times, and for the charges, mentioned and set forth in the paper writing now produced and shewn to me marked “ .”

3. The charges made in the said paper writings “ ” and “ ” are fair and reasonable, and such as are usual and customary in the profession of a solicitor.

4. The said company was also at the date of the said order, and still is, justly and truly indebted to me in the sum of £ , being the balance of the cash account now produced and shewn to me marked “ .”

5. I have not nor hath any person or persons on my behalf received the said sums of £ , £ , and £ respectively, or any part or parts thereof respectively, or any security or satisfaction for the same, or any part thereof respectively [*if so, except numerous deeds, papers, securities and documents of the said company which I hold, and upon which I claim a lien in respect of the demands so owing to me as aforesaid*].

6. I have in the cash account marked “ ,” according to the best of my knowledge, information, and belief, set forth a full, true and particular account of all and every the sum and sums of money which have come to my hands, or to the hands of any person or persons on my behalf, for or on behalf of the said company, with the times when, and the names of the persons from whom and on what account, the same have been respectively received, and also a like account of the disbursements, allowances and payments (irrespective of those charged in the said bill of costs) made by me in respect of or on account of the said

(a) See note to form 146.

(b) See, also, for other forms of affi-

davits by creditors in proof of debts, Daniell's Forms, 4th ed., p. 481, *et seq.*

company, together with the times when, the names of the persons to whom, and the purposes to which the same were disbursed, allowed or paid.

7. I further say, that save and except as appears in the said cash account marked “ ”, I have not nor hath any person on my behalf possessed, received, or got in any assets of the said company, or any money on account thereof.

No. 149.

[Title, &c., Nos. 1 and 3.]

on the part of A. B., of, &c., that C. D., the liquidator of the above-named company, may be ordered forthwith to admit the said A. B. as a creditor of the said company for [state particulars.]

No. 150.

Summons
to admit as
creditor.

[Title No. 1.]

In pursuance of the directions given to me by [name of judge], I hereby certify that the result of the adjudication upon debts and claims against the above-named company, brought in pursuant to the advertisement issued in that behalf, dated the day of 18 , so far as such adjudication has up to the date of this certificate been proceeded with, is as follows :—

No. 151.

Certificate
of regis-
trar as to
debts and
claims.

The debts and claims which have been allowed are set forth in the first schedule hereto, and, with the interest thereon and costs mentioned in the said schedule, are due to the persons therein named, and amount altogether to £ .

I have in the first part of the said schedule set forth such of the said debts and claims as carry interest, and the interest thereon has been computed after the rate they respectively carry down to the date of this certificate (a).

I have in the second part of the said schedule set forth such of the said debts and claims as do not carry interest.

The claims set forth in the second schedule hereto have been brought in by the persons therein named, and have been disallowed (b).

The evidence produced, &c.

(a) When the company is insolvent (as to this, see *Milan Tramways Co.*, per Selborne, C., 25 Ch. D., at p. 591, and ante, pp. 101, 120) the following words will be inserted in place of the above: “down to the day of the commencement of the winding-up.” This must be done, because in *Warrant Finance Co.’s Case* (4 Ch. 643) it was decided that in the case of an insolvent company which is being wound up, creditors whose debts carry interest are entitled to dividends only upon what

was due for principal and interest at the winding-up, and it is only in the event of there being a surplus that they can have any claim for subsequent interest; in which case the dividends will be treated as applicable, first, in payment of interest, and then in reduction of principal.

(b) Where there are other claims which have not been fully adjudicated upon, add a paragraph to that effect, and a third schedule.

No. 152.

THE FIRST SCHEDULE ABOVE REFERRED TO.

First Part.—Debts and Claims which carry interest.

No.	Names of Creditors.	Addresses and Descriptions.	Particulars of Debt.	Total due.
				£ s. d.

Second Part.—Debts and Claims which do not carry interest.

No.	Names of Creditors.	Addresses and Descriptions.	Particulars of Debt.	Interest on Principal (less Property Tax).	Total due.
				£ s. d.	£ s. d.

THE SECOND SCHEDULE ABOVE REFERRED TO.

No.	Names of Creditors.	Addresses and Descriptions.	Particulars of Claim.	Amount claimed.
				£ s. d.

Dated this day of 18 .

Registrar.

Approved the
day of 18 . }

No. 152.

[Title, &c., Nos. 1 and 3.]

Summons
to pay
dividend
to credi-
tors.

on the part of H. J. L., the liquidator of the above-named company, that he may be at liberty to pay to the several persons named in the column of the schedule hereto, being creditors of the said company named in the chief clerk's certificate, filed the day of , the several sums of money set opposite their respective names in the column of the said schedule, being a dividend of in the pound upon the amount certified to be due to such creditors as set out in the column of the said schedule. [And that the amounts under £10 appearing in the column to the said schedule, and amounting altogether to the sum of £ , be paid to the said liquidator, he undertaking to pay the sum to the parties respectively entitled thereto.]

[Titles, &c., Nos. 1 and 3.]

that notwithstanding the claim of, &c. [*describe disputed claim*], H. J. L., the liquidator of, &c., be at liberty to declare and pay a first dividend, &c. [*see other forms*], provided that the applicant do reserve out of the assets of the said company a sum sufficient for the payment of a like amount upon the said claim of £ referred to in his said affidavit filed on the, &c. And that the costs, &c.

No. 153.

Summons
to pay
dividend
and to
arrange
for dis-
puted
claim.

[Title, &c., Nos. 1 and 3.]

that H. J. L., the liquidator of, &c., may pay to the several creditors named in the schedule to the chief clerk's certificate, dated the, &c., and in the schedule hereto out of the assets of the said company the sums set opposite to their names respectively in the schedule hereto in the 7th column thereof, being the amount of the final dividend and interest due to them in respect of their said debts. And that it may be referred to the proper taxing-master to tax the costs, charges, and expenses of the liquidator of this liquidation as between solicitor and client, &c.

No. 154.

Summons
to pay
final
dividend.

THE SCHEDULE ABOVE REFERRED TO.

No.	Names of Creditors.	Total due on the day of	Dividend of in £ paid on account.	Balance due.	Interest up to, &c.	Total.
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[Title, &c., No. 1.]

1. That the statement contained in the paper writing now produced and shewn to me and marked with the letter A. is correct and true, and shews that after making due provision for the costs of the winding up of the above-named company there remains a sum of £ .

2. The amount of claims allowed by the chief clerk's certificate is £ .

3. Besides the claims included in the said certificate there are other claims that may be proved against the company to the extent of £ , or thereabouts.

4. The aforesaid sum of £ is sufficient to pay a dividend of in the £ on the amount of the claims under the certificate and also on the claims yet to be proved against the company.

5. I consider that the dividend to be declared should be at the rate of in the £ on the aforesaid sum of £ .

No. 155.

Affidavit
of liqui-
dator as to
dividend.

[Title.]

APPROXIMATE STATEMENT OF AFFAIRS TO
LIABILITIES.

£ s. d.

DAY OF

ASSETS.

£ s. d.

No. 156.

The ex-
hibit
to the
preceding
affidavit.

No. 157.

Order for
payment
of divi-
dends and
to retain
some.

that the liquidator of the said company do declare a dividend of in the £ upon the debts certified to be due from the above-named company by the said chief clerk's certificate dated, &c. And that the said liquidator do pay or apply the several sums set out in the column of the schedule hereunder written being the amount of the dividend of in the £ upon the amount of the debts set out in the column of the said schedule in manner following, that is to say, in payment to the several creditors whose names are set out in the column of the said schedule of the several sums set opposite their respective names in the column of the said schedule and by retaining the several sums set opposite the respective names of the said creditors in the and last column of the said schedule in payment or on account of the several sums set out in the column of the said schedule opposite the respective names of the said creditors and due from them respectively as contributories of the said company.

Schedule, &c.

No. 158.

Notice to
creditor to
attend to
receive
debt.

[Title No. 1.]

Sir,

Upon application at my office, No. Street, Middlesex, on or after the instant, between the hours of ten and four o'clock, you may receive a cheque for the amount of your debt, allowed in this matter as under :—

Principal .	.	.	.	.	.	£
Interest .	.	.	.	.	.	£
Costs of proof .	.	.	.	.	.	£

Total £

If you cannot attend personally, the cheque will be delivered to your order, upon your filling up and signing the subjoined form.

The bills or securities (if any) held by you must be produced at the time of such application.

Dated this day of 18 .

I am, &c.,

H. J. L., Liquidator.

To Mr. S. T.

[Form of Order.]

Sir,

Please to deliver to W. R. the cheque for £ referred to in the above letter as payable to me.

S. T.,

Creditor.

To Mr. H. J. L., Liquidator }
of the Company.

CONTRIBUTORIES.

No. 159.

[Title No. 1.] (45.)

List of contribu-
tories to be made
out by
liquidator.

1. [The paper writing now produced and shewn to me, and marked with the letter A., contains (a).] [The following is] a list of the contributories of the said company, made out by me from the books and papers of the said company, together with their respective addresses and the number of shares [or extent of interest] to be attributed to each [and such list is, to the best of my knowledge, information, and belief, a true and accurate list of the contributories of the said company (a)] so far as I have been able to make out or ascertain the same.

2. In [I have in (a)] the first part of the list, [marked A., distinguished (a)] the persons who are contributories in their own right [are distinguished].

[Affidavit in support of list of contributories(a).]

3. In [I have in (a)] the second part of the said list [marked A., distinguished (a)] the persons who are contributories as being representatives of, or being liable to the debts of others [are distinguished].

[Sworn, &c. (a).]

[A (a)]

[This list of contributories marked A. was produced and shewn to R. P. H., and is the same list of contributories as is referred to in his affidavit sworn before me this day of 189 .

W. B., &c. (a).]

[List of contributories referred to in preceding form (a).]

First Part.—Contributories in their own right.

Serial No.	Name.	Address.	Description.	In what Character included.	Number of Shares [or extent of Interest].
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Second Part.—Contributories as being representatives of, or liable to the debts of others.

Serial No.	Name.	Address.	Description.	In what Character included.	Number of Shares [or extent of Interest].
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[Title No. 1.] (46.)

No. 160.

[Take notice that I, , the liquidator of the above-named company, have] [[name of judge] has (a)] appointed the day of 189 , at of the clock in the noon, at (b) , in the county of , [at his chambers, at, &c. (a)] to settle the list of the contributories of the above-named company [made out and left at the chambers of the said judge by the liquidator of the said company and (a)] [made out by me, pursuant to the Companies Acts, 1862 to 1890, and the rules thereunder, and that] you are included in such list in the character and for the number of shares [or extent of interest] stated

Notice to contributories of appointment to settle list.

(a) The words in the thick brackets of 1862, by the Gen. O. 1862.
are used in windings-up under the Act (b) Insert place of appointment.

No. 160. below; and if no sufficient cause is shown by you to the contrary at the time and place aforesaid, the list will be settled [by the said judge (a)] including you therein.

Dated this day of 189 .

Liquidator.

To Mr. A. B. [and to Mr. C. D., }
his solicitor.]

No. on List.	Name.	Address.	Description.	In what Character included.	Number of Shares [or extent of Interest].
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No. 161.

[Title No. 1.] (50.)

**Affidavit
of service
of notice
to contri-
butory.**

1. The first six columns of the schedule now produced and shewn to me, and marked with the letter A., contain a true copy of the list of contributories of the said company, made out [and left at the chambers of [the judge] (a)] by the liquidator of the company on the day of 189 , and now on the file of proceedings of the said company, as I know from having on the day of 189 , examined and compared the said schedule with the said list [and I have in the seventh column of the said schedule marked A., set forth the names and addresses of the solicitors who have entered appearances for any of the contributories named in the said list (a)].

2. I did on the day of 189 , in the manner hereinafter mentioned, serve a true copy of the notice now produced and shewn to me and marked B., upon each of the respective persons whose names, addresses, and descriptions appear in the second, third, and fourth columns of the said schedule marked A., except that in the tabular form at the foot of such copies respectively I inserted the number on list, name, address, description, in what character included, and number of shares [or extent of interest] of the person on whom such copy of the said notice was served, in the same words and figures as the same particulars are set forth in the said schedule marked A.

3. I served the said respective copies of the said notice, by putting such copies respectively, duly addressed to such persons respectively [or their solicitors (a)], according to their respective names and addresses appearing in the said schedule marked A., and with the proper postage-stamps affixed thereto, as prepaid letters into the Post Office Receiving House, No. , in street, in the county of , between the hours of and of the clock, in the noon of the day of 189 .

No. 162.

A. (51.)

**Schedule
referred
to in
preceding
form.**

This schedule marked A. was produced and shewn to W. S., and is the same schedule as is referred to in his affidavit sworn before me this day of 189 .

W. B., &c.

(a) The words in the thick brackets of 1862, by the Gen. O. 1862. are used in windings-up under the Act

1.	2.	3.	4.	5.	6.	7.
Number on List.	Name.	Address.	Description.	In what Character included.	Number of Shares [or extent of Interest].	Names and Addresses of Solicitors who have entered appearances, and been served with a copy of the notice referred to in the Affidavit of W. S. to which this schedule is an exhibit (a).]

No. 162.

[Title No. 1.] (49.)

1. The following is a list of persons who, since making out the list of contributories herein, dated the day of 189 , I have ascertained are, or have been, holders of shares in [or members of] the above-named company, and to the best of my judgment are contributories of the said company.

2. The said supplemental list contains the names of such persons, together with their respective addresses and the number of shares [or extent of interest] to be attributed to each.

3. In the first part of the said list such of the said persons as are contributories in their own right are distinguished.

4. In the second part of the said list such of the said persons as are contributories as being representatives of, or being liable to the debts of others, are distinguished.

[The supplemental list is to be made out in the same form as the original list.]

No. 163.

Supplemental list of contributories under Act of 1890.

[Title, &c., No. 1.]

1. Since leaving at the chambers of the judge the list of the contributories in this matter, on the day of 18 , it has come to my knowledge that the several persons whose names are set forth in the supplemental list of contributories now produced and shewn to me, and marked with the letter B., are, or have been holders of shares in [or members of] the said company, and to the best of my judgment, information, and belief, such persons are contributories of the said company.

2. The said supplemental list marked B. contains the names of such persons, together with their respective addresses, and the number of shares [or extent of interest] to be attributed to each; and such list is, to the best of my knowledge, information, and belief, true and accurate.

3. I have, in the first part of the said list marked B., distinguished such of the said persons as are contributories in their own right.

4. I have, in the second part of the said list marked B., distinguished such of the said persons as are contributories as being representatives of, or being liable to the debts of others.

(a) The words in the thick brackets of 1862, by the Gen. O. 1862. are used in windings-up under the Act

No. 164.

Supplemental list of contributories and affidavits in support under Act of 1862.

No. 165.

B.

[Title No. 1.]

Supple-
mental
list of con-
tributories
referred
to in pre-
ceding
form.

This supplemental list of contributories marked B. was produced and shewn to H. J. L., and is the same supplemental list of contributories as is referred to in his affidavit, sworn before me this day of 18 .

W. B., &c.

[The supplemental list is to be made out in the same form as the original list, see form supra.]

No. 166.

[Title No. 1.] (47.)

Certificate
of liqui-
dator
[chief
clerk (a)]
of final
settlement
of the list
of contri-
butories.

[Pursuant to the Companies Acts, 1862 to 1890, and to the rules made thereunder, I, the undersigned, being the liquidator of the above-named company], [In pursuance of the directions given to me by [name of judge], I (a)] hereby certify that the result of the settlement of the list of contributories of the above-named company [made out and left at the chambers of the said judge by the official liquidator of the said company on the day of 18 , pursuant to the above statute and the general order of this Court in that behalf (a)], so far as the said list has been settled, up to the date of this certificate, is as follows:—

1. The several persons whose names are set forth in the second column of the First Schedule hereto have been included in the said list of contributories as contributories of the said company in respect of the number of shares [or extent of shares] set opposite the names of such contributories respectively in the said schedule.

I have, in the first part of the said schedule, distinguished such of the said several persons included in the said list as are contributories in their own right.

I have, in the second part of the said schedule, distinguished such of the said several persons included in the said list as are contributories as being representatives of or being liable to the debts of others.

2. The several persons whose names are set forth in the second column of the Second Schedule hereto have been excluded from the said list of contributories.

3. I have, in the seventh column of the said First and Second Schedules, set forth opposite the name of each of the several persons respectively the date when such person was included in or excluded from the said list of contributories (b). [The evidence produced, &c. (a).]

4. Before settling the said list, I was satisfied by the affidavit of W. S. , clerk to , duly filed with the proceedings herein, that notice was duly sent by post to each of the persons mentioned in the said list, informing him that he was included in each list in the character and for the number of shares [or extent of interest] stated therein, and of the day appointed for finally settling the said list. [This last paragraph is to be used under the Act of 1890.]

(a) The words in the thick brackets are used in windings-up under the Act of 1862, by the Gen. O. 1862.

(b) If there are persons alleged to

be contributories, but their cases have not yet been adjudicated on, add a paragraph to this effect, and also a third schedule.

THE FIRST SCHEDULE ABOVE REFERRED TO.
First Part.—Contributories in their own right.

No. 166.

Serial No. in List.	Name.	Address.	Description.	In what Character included.	Number of Shares [or extent of Interest].	Date when included in the List.
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Second Part.—Contributories as being Representatives of or liable to the Debts of others.

Serial No. in List.	Name.	Address.	Description.	In what Character included.	Number of Shares [<i>or</i> extent of Interest].	Date when included in the List.
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THE SECOND SCHEDULE ABOVE REFERRED TO.

Serial No. in List.	Name.	Address.	Description.	In what Character proposed to be included.	Number of Shares [or extent of Interest].	Date when excluded from the List.
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Dated this day of , 189 .
(Signed)

Liquidator.

[Approved
the day of 18 .] }
(a)

[G. H., Chief Clerk (a).]

[*Title No. 1.*] (48.)

No. 167.

Take notice that I, _____, the liquidator of the above-named company, have, by certificate dated the _____ day of _____ 189 _____, under my hand, finally settled the list of contributories of the said company, and that you are included in such list in the character and for the number of shares [or extent of interest] stated below.

Notice to
contri-
butory of
final
settlement
and that
name
included.

Any application by you to vary the said list of contributories, or that your name may be excluded therefrom, must be made by you to the Court within 21 days from the service on you of this notice, or the same will not be entertained.

The said list may be inspected by you at my office at (b) on any day between the hours of and .

Dated this day of 189 .

(Signed)

Liquidator.

To Mr.
[or to Mr.
his solicitor].

No. in List.	Name.	Address.	Description.	In what Character included.	Number of Shares [or extent of Interest].
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(a) The words in the thick brackets are used in windings-up under the Act of 1862, by the Gen. O. 1862.
(b) State address.

No. 168.

[Title, &c., Nos. 1 and 3.]

Summons
to strike
name off
list.

that the name of the said A. B. may be struck off the list of contributories of the said company as a contributory in respect of shares, and that the costs of this application may be paid by the liquidator of the said company.

No. 169.

[Title, &c., Nos. 1 and 3.]

Another
form.

that the name of A. B., of, &c., may be removed from the list of contributories of the above-mentioned company, and that all proceedings against the said A. B. under an order dated the day of 18 , and made in the above matters may be stayed, and that the liquidator of the above-named company may be ordered to pay the costs of this application.

No. 170.

[Title, &c., Nos. 1 and 3.]

Summons
to vary
by adding
other
parties.

That the list of contributories of the said company may be varied by placing C. D., of, &c., upon such list as a member in class (A) in respect of shares in the place and stead of A. B., whose name now appears upon the said list as a contributory in respect of such shares, and that such consequential directions may be given and alterations or directions made in the said certificate as may be necessary, and that the costs, &c. [see last form].

No. 171.

[Title No. 1.] (52.)

Order on
applica-
tion to
vary list.

Upon the application of W. N. to review or vary the list of contributories of the said company in respect of the inclusion of the said W. N. therein, and that his name may be excluded therefrom [*or, as the case may be*], and upon hearing, &c., and upon reading, &c., It is Ordered, That the name of the said W. N. be excluded from the said list of contributories, *or may be included in the said list of contributories for shares, [or as the case may be]* [or the Court [judge (a)] doth not think fit to make any order on the said application, except that the said W. N. do pay to the liquidator of the said company his costs of this application, to be taxed by in case the parties differ].

No. 172.

[Title, &c., Nos. 1 and 3.]

Summons
to bring
actions
against
contri-
butories
with view
to bank-
ruptcy (c).

that H. J. L., the liquidator of, &c., be at liberty to bring and prosecute actions against the several persons following, that is to say being contributories of the above-named company (b) for, &c.

(a) The words in the thick brackets are used in windings-up under the Act of 1862, by the Gen. O. 1862.

(b) As to the necessity of this course, in order to institute bankruptcy proceedings, see *ante*, p. 187.

(c) If necessary, leave should be asked to apply to the judge without further summons for liberty to bring and prosecute actions against contributories beyond the above-named persons.

And that the said H. J. L. be at liberty to commence bankruptcy proceedings if so advised against those of the said several contributories against whom he may obtain judgments, and to postpone the commencement of proceedings against such of them as he may think advisable so as to be guided as regards them by the result of the proceedings taken against the others. And that the costs, &c.

No. 172.

[Title, &c., Nos. 1 and 3.]

that H. J. L., the liquidator of, &c., be at liberty to take proceedings either by execution or judgment debtor summons or otherwise as he may be advised to enforce payment of the amount due from C. D., a contributory of the company under the order dated the day of . And that the costs of and incident to this application, and of any proceedings to be taken by virtue of the order to be made hereon, be costs in the winding-up and paid out of the assets of the company.

No. 173.

Summons to take proceedings by execution, &c.

[Title, &c., Nos. 1 and 3.]

that all debts due and owing or accruing due from A. B., of, &c., to C. D., of, &c., a contributory of the above-named company, be attached, to answer an order made against the said C. D., on the day of . And that the said A. B., his solicitor or agent attend at the chambers of, &c., situate, &c., on, &c., at, &c., to shew cause why he should not pay to E. F., of, &c., the liquidator of the said company, the debt due from him to the said C. D., or so much thereof as may be sufficient to satisfy the amount due from the said C. D., under the said order of the, &c.

No. 174.

Summons to attach debts due to a contributory.

[Title, &c., Nos. 1 and 3.]

that the shares in the Company, Limited, standing in the name of A. B., stand charged with the payment to C. D., of, &c., the liquidator of the above-named company of the sum of £ in the said order dated the, &c., mentioned, and interest thereon at the rate of £4 per cent. per annum, from the, &c., until payment. And that the said Company, Limited, be restrained from permitting a transfer of the said shares by the said A. B., and that the costs, &c.

No. 175.

Summons for order charging shares of contributory.

[Title, &c., Nos. 1 and 3.]

that H. J. L., the liquidator of the above-named company, be at liberty out of the assets of the said company to pay the several sums mentioned in the 7th column of the schedule hereto to the persons mentioned in the 2nd column, being a return of per share to such persons as contributories of the said company after deducting the several sums due from them to the said company mentioned in the column of such schedule. [And that the liquidator be at liberty to comprise in one cheque all such of the said amounts as do not exceed £10, he by his solicitor undertaking to distribute the proceeds amongst the parties entitled thereto.]

No. 176.

Summons to pay dividend to contributories.

No. 176.

THE SCHEDULE BEFORE REFERRED TO.
Contributories holding fully paid shares.

No. on List.	Name.	Address and Description.	Number of Shares.	Amount of return of s. d. per share.	Amount of indebtedness.	Amount to be paid.
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No. 177.

Notice of
return to
contribu-
tories.

(72a.)

If this return be not claimed within six months, application made thereafter must bear a 1s. Companies (Winding-up) stamp, when the amount applied for does not exceed £1, or a 2s. 6d. stamp when the amount exceeds £1.

[Please bring this warrant with you.]

[Title No. 1.]

Return of £ per share.

Board of Trade,

Department of the Official Receivers in Companies Liquidation,
33, Carey Street, Lincoln's Inn, London, W.C.,
189 .

Notice is hereby given, that a return of per share has been declared in this matter, and that the same may be received at my office, as above, on the day of 189 , or on any subsequent day, except Saturday, between the hours of ten and two.

Upon applying for payment, *this notice must be produced entire*. If you do not attend personally, you must fill up and sign the subjoined Forms of *Receipt* and *Authority*, when a cheque or money order payable to your order will be delivered to the bearer.

C. J. STEWART,

To

Senior Official Receiver and Liquidator.

RECEIPT.

No.

189 .

Received of the Official Receiver and Liquidator in this matter the sum of pounds shillings and pence, being the amount payable to in respect of the return of per share held by in this company.

(Contributory's signature.)

£ : :

AUTHORITY.

SIR,

Please deliver to (a) the cheque or money order for the return payable to in this matter.

(Contributory's signature.)

To the Official Receiver and Liquidator.

(a) Insert the name of the person who is to receive the cheque or money order, or the words "^{me} by post, at my ^{our} risk," if you wish it sent to you in that way.

CALLS.

[Title, &c., No. 3.]

No. 178.

that the several persons named in the second column of the schedule hereto being respectively contributories of the above company do on or before, &c., or subsequently within four days after service of the order to be made hereon, pay to A. B., the liquidator of the said company, at, &c., the several sums of money set opposite to their respective names in the 7th column of the said schedule hereto, being the amounts due from the said several persons respectively in respect of arrears of calls on the shares in the said company held by them respectively, and that the said several persons do also pay to the said A. B. at the same time and place interest at the rate of £5 per cent. per annum on the respective amounts specified in the said 7th column of the said schedule hereto from the time when each of such calls became due as mentioned in the 6th column of the said schedule hereto until payment, and that the said several persons do also pay to the said A. B. at the same time and place the costs of this application mentioned in the 8th column of the said schedule.

**Summons
for calls
due before
winding-
up (a).**

THE SCHEDULE ABOVE REFERRED TO.

No. on List.	Name.	Address.	Descrip- tion.	In what Character.	Date when calls due.	Amount due exclusive of Interest.	Amount due for Costs.
-----------------	-------	----------	-------------------	-----------------------	----------------------------	--	-----------------------------

[Title.]

No. 179.

Take notice that a meeting of the committee of inspection of the above company will be held at on the (b) day of 189 , at o'clock in the noon, for the purpose of considering and obtaining the sanction of the committee to a call of £ per share proposed to be made by the liquidator on the contributories.

Annexed hereto is a statement shewing the necessity for the proposed call and the amount required.

**Notice to
committee
of inspec-
tion of
meeting
to sanction
proposed
call.**

Dated this day of 189 .
(Signed)

Liquidator.

STATEMENT.

1. The amount due in respect of proofs admitted against the company, and the estimated amount of the costs, charges, and expenses of the winding up, form in the aggregate the sum of £ or thereabouts.

2. The assets of the company amount in value to the sum of £ . There are no other assets, except the amounts due from certain of the contributories to the company, and in my opinion it will not be possible to realize in respect of the said amounts more than £ .

3. The list of contributories has been duly settled, and persons have been settled on the list in respect of the total number of shares.

4. For the purpose of satisfying the several debts and liabilities of the company,

(a) This form can easily be altered days from the date when the notice to a notice of motion. will in course of post reach the person to whom it is addressed.

(b) To be a date not less than seven

No. 179.

and of paying the costs, charges, and expenses of the winding-up, I estimate that a sum of £ will be required in addition to the amount of the company's assets hereinbefore mentioned.

5. In order to provide the said sum of £ it is necessary to make a call on the contributories, and having regard to the probability that some of them will partly or wholly fail to pay the amount of the call, I estimate that for the purpose of realizing the amount required it is necessary that a call of £ per share should be made.

(Annex tabular statement shewing amounts of debts, costs, &c., and of assets.)

No. 180.

(55.)

Advertisement for local paper of meeting of committee.

In the matter of, &c.

Notice is hereby given that the undersigned liquidator of the above-named company proposes that a call should be made on all the contributories of the said company [*or as the case may be*] of £ per share, and that he has summoned a meeting of the committee of inspection of the company to be held at , on the day of 189 , at o'clock in the noon, to obtain their sanction to the proposed call.

Each contributory may attend the meeting and be heard, or make any communication in writing to the liquidator or the members of the committee of inspection to be laid before the meeting in reference to the intended call.

A statement shewing the necessity of the proposed call, and the purpose for which it is intended, may be obtained on application to the liquidator at his office at (a).

(Signed)

Liquidator.

Dated this day of 189 .

No. 181.

(56.)

Resolution of committee sanctioning call.

Resolved, that a call of £ per share be made by the liquidator on all the contributories of the company [*or as the case may be*].

(Signed)

Members of the Committee
of Inspection.

Dated this day of 189 .

No. 182.

(57.)

Notice of call sanctioned by committee to contributory.

In the matter, &c.

Take notice that the committee of inspection in the winding up of this company have sanctioned a call of £ per share on all the contributories of the company.

The amount due from you in respect of the call is the sum of £ . This sum should be paid by you direct to me at my office (a) on or before the day of 189 .

Dated this day of 189 .

Liquidator.

To Mr.

(a) Insert address.

[Title No. 1.] (59.)

No. 183.

**Affidavit
of liqui-
dator in
support of
proposal
for call.**

1. I have, in the schedule now produced and shewn to me, and marked with the letter A., set forth a statement shewing the amount due in respect of the debts [proved and admitted] [allowed (a)] against the said company, and the estimated amount of the costs, charges, and expenses of and incidental to the winding up the affairs thereof, and which several amounts form in the aggregate the sum of £ or thereabouts.

2. I have also in the said schedule set forth a statement of the assets in hand belonging to the said company, amounting to the sum of £ and no more. There are no other assets belonging to the said company, except the amounts due from certain of the contributories of the said company, and, to the best of my information and belief, it will be impossible to realize in respect of the said amounts more than the sum of £ or thereabouts.

3. [persons have been settled by me] [It appears by the chief clerk's certificate, dated the day of 18 , that persons have been settled (a)] on the list of contributories of the said company in respect of the total number of shares.

4. For the purpose of satisfying the several debts and liabilities of the said company, and of paying the costs, charges, and expenses of and incidental to the winding up the affairs thereof, I believe the sum of £ will be required in addition to the amount of the assets of the said company mentioned in the said Schedule A. and the said sum of £ .

5. In order to provide the said sum of £ , it is necessary to make a call upon the several persons who have been settled on the list of contributories as before mentioned, and, having regard to the probability that some of such contributories will partly or wholly fail to pay the amount of such call, I believe that for the purpose of realizing the amount required as before mentioned, it is necessary that a call of £ per share should be made (b).

[Title, &c., No. 1.]

No. 184.

**Affidavit
of liqui-
dator in
support of
summons
for pay-
ment of
calls in
respect of
shares
forfeited,
&c.**

1. I am the liquidator of the above-named company, and from inspection of the books and papers in my possession, I am able to depose to the following facts:—

2. The exhibit marked “———” now produced and shewn to me at the time of swearing this my affidavit, is a copy of the memorandum and articles of association. By article — of such articles of association it is provided as follows:—

“Any member whose shares shall have been forfeited shall, notwithstanding, be liable to pay to the company all calls owing upon such shares at the time of forfeiture and interest thereon.”

3. C. D., of, &c., on the day of 18 , applied for shares in the above-named company, which said shares were allotted to him on the day of 18 .

4. A call of £ per share was made on the day of 18 , on the said C. D. in respect of the said shares; on the day of the said C. D. paid the sum of £ on account of such call,

(a) The words in the thick brackets are used in windings-up under the Act of 1862, by the Gen. O. 1862.

contributories pending, it should be shewn that they would not prevent the necessity of the call.

(b) If there are disputed cases with

No. 184.

but having neglected to pay the balance of the said call the said shares were forfeited, as appears by a minute of the day of 18 . There was then due and owing from the said C. D. the sum of £ , and there is now due and owing from the said C. D. in respect of the said shares the said sum of £ , and also the sum of £ , being interest thereon at the rate of £ per cent. per annum from the said day of 18 , up to the present time.

5. E. F. of, &c., on the day of 18 , had shares in the above-named company transferred to him from G. H., and the said E. F., on the day of 18 , had shares in the above-named company transferred to him from I. K., making together with the said shares shares in all; and in consequence of the non-payment of a call of £ per share by the said E. F., the said shares were on the day of 18 , as appears by a minute of that date, duly forfeited. There was then due from the said E. F. in respect of such shares the sum of £ , and there is now due from him the said sum of £ , together with the sum of £ , being the amount of interest thereon due at the rate of £ per cent. per annum from the said day of 18 .

No. 185.

[Title, &c., Nos. 1 and 3.]

**Summons
for call
by instal-
ments.**

that a call of £ per share be made on all the contributories of the above-named company other than upon the contributories, &c. [here state exceptions.] And that such call be paid in two instalments of £ per share, the first instalment of £ per share on, &c., and the second instalment of £ per share on, &c. And that in the event of any of the said contributories not paying the said first instalment of the call on the said, &c., then that the full call of £ per share be paid by the said contributories making such default on or before the, &c. And that such two instalments as aforesaid be paid respectively on or before the days above mentioned by each such contributory to the account of, &c. And that the costs, &c.

No. 186.

[Title No. 1.] (60.)

**Advertise-
ment of
intended
call.**

[By direction of [name of judge] (a)], Notice is hereby given that the (b) Court [said judge (a)] has appointed the day of 189 , at o'clock in the noon, at (c) , [his chambers at, &c. (a)], to sanction a call on all the contributories of the said company [or as the case may be], and that the liquidator of the said company proposes that such call shall be for £ per share. All persons interested are entitled to attend at such day, hour, and place, to offer objections to such call.

Dated this day of 189 .

H. J. L.,
Liquidator,
[Registrar (a).]

(a) The words in the thick brackets are used in windings-up under the Act of 1862, by the Gen. O. 1862.

(b) Name of court.
(c) State place of appointment.

[Title No. 1.] (61.)

No. 187.

Upon the application of the liquidator of the above-named company, and upon reading [two orders dated the day of 18 and the day of 18 , the chief clerk's certificate dated the day of 18 (a)] the affidavit of the said liquidator, filed 189 , and the exhibit marked A. therein referred to, and an affidavit of , filed 189 , it is ordered [that leave be given to the liquidator to make a call] [that a call (a)] of £ per share [be made (a)] on all the contributories of the said company [or as the case may be]. And it is ordered that each such contributory do, on or before the day of 189 , pay [into the Bank of England (a)] to the [account of the (a)] liquidator of the company (b) the amount which will be due from him or her in respect of such call.

Order for
a call.

[Title No. 1.] (62.)

No. 188.

The amount due from you, in respect of the call made pursuant to leave given by the within order, is the sum of £ , which sum is to be paid by you to me as the liquidator of the said company at my office [No. 33, Carey Street, Lincoln's Inn, London, W.C.].

Notice to
be served
with the
order
sanction-
ing a call.

Dated this day of 189 .

To [Official Receiver and] Liquidator.

Moneys not sent by post can be paid in:—Every week-day, except Saturday, from 10 to 4; on Saturdays, from 10 to 1. *Bank-notes and coin should not be sent by post.*

All remittances, whether by cheque or Post Office Order, should be crossed "Bank of England, Credit of Companies Liquidation Account."

[Title No. 1.]

No. 189.

The amount due from you, A. B., in respect of the call made by the above [or within] order, is the sum of £ , which sum is to be paid by you into the Bank of England, to the account mentioned in the said order. You can pay the same in person, or through a banker or other agent; but this notice and copy order must be produced at the bank upon such payment, and the cashier of the bank will, upon receiving the same, deliver to you a certificate of the payment in, numbered , signed by the said cashier. In order to prevent proceedings being taken against you for non-payment, you must, immediately upon such payment in, cause written notice of the payment, and of the date thereof, to be given to me as the liquidator of the said company, at my office, No. Street, in the county of Middlesex (c).

Notice to
be served
with order
for a call
under Act
of 1862.

Dated this day of 18 .

R. P. H., Liquidator.

To Mr. A. B.

(a) The words in the thick brackets are used in windings-up under the Act of 1862, by the Gen. O. 1862.

(b) If it is intended to enforce the order by *fi. fa.*, see *Leeds Banking Co.*

(c) Sometimes a note is added that interest will be charged on all calls

unpaid after a certain date. In case of an adjournment, notice may also be given, if the chief clerk consents in a winding-up under the Act of 1862, that application will be made to the judge for a peremptory order in the event of non-payment.

No. 190.

[Title, &c., Nos. 1 and 3.]

Summons
for pay-
ment of
call (a).

On the application of A. B., the liquidator to the above-named Company, that C. D. of, &c., one of the contributories of the said company, may be ordered, on or before the day of 18 [or, within four days after service of this order], to pay into the Bank of England to the account of the liquidator of the Company [or, to A. B., the liquidator of the said company at, &c.], the sum of £ , in respect of the call of £ per share, made by [the order for call dated the day of 18 ,] and interest thereon at the rate of 5 per cent. per annum from the day of , and that he may be ordered to pay the costs of and incidental to this application.

No. 191.

[Title No. 1.] (63.)

Affidavit
in support
of appli-
cation for
order for
payment
of call.

1. None of the contributories of the said company, whose names are set forth in the schedule hereunto annexed, marked A., have paid or caused to be paid the sums set opposite their respective names in the said schedule, which sums are the amounts now due from them respectively under the call of £ per share [duly made under the Companies Acts, 1862 to 1890], [in pursuance of the order of the judge in that behalf (b)] dated the day of 189 .

2. The respective amounts or sums set opposite the names of such contributories respectively in such schedule are the true amounts due and owing by such contributories respectively under the said call.

A.

THE SCHEDULE ABOVE REFERRED TO.

No. on List.	Name.	Address.	Description.	In what Character included.	Amount due.
					£ s. d.

NOTE.—In addition to the above affidavit, an affidavit of the service of the application for the call [Order and Notice (b)] will be required.

No. 192.

[Title No. 1.] (64, 64a.)

Balance
order for
payment
of calls,
including
married
women
contribu-
tories and
executors
of deceased
contribu-
tories.

Upon the application of , the liquidators of the above-named company, by summons dated , and upon hearing and upon reading the order dated , continuing the voluntary winding-up of the above-named company subject to the supervision of the Court, the certificate of the said of the settlement of the list of contributories of the above-named company, dated , and an affidavit of, &c., it is ordered that the several persons named in the second column of the schedule hereto being respectively contributories of the said company, do, on or before , or subsequently within seven days after service of

(a) See form of order for payment of call, No. 192.

(b) The words in the thick brackets

are used in windings-up under the Act of 1862, by the Gen. O. 1862.

this order, pay to the applicants the said , as such liquidators as aforesaid, at their offices, , in the City of London, the several sums of money set opposite to their respective names in the sixth column of the schedule hereto, such sums being the amounts due from the said several persons respectively in respect of calls duly made.

And it is further ordered that the said several persons whose names are set forth in the second column of the schedule hereto, do, within the like period, pay to the said , as such liquidators as aforesaid, the several sums set opposite to their respective names in the seventh column of the schedule hereto, being the ascertained proportion of the costs of this application properly payable by such several persons respectively.

And it is further ordered that such persons do pay interest at the rate of five pounds per cent. per annum on the amounts specified in the sixth column of the schedule hereto, so due from them respectively from the time appointed for payment of such calls to the time of actual payment.

And it is ordered that the respective sums set opposite to the respective names of the said several persons in the schedule hereto who are respectively married women be payable out of their separate property respectively as hereinafter mentioned and not otherwise. And it is ordered that execution hereon against the said several persons who are married women be limited to their separate property respectively, not subject to any restriction against anticipation unless by reason of Section 19 of the Married Women's Property Act, 1882, the property shall be liable to execution notwithstanding such restraint.

And it is ordered that the several sums payable by named in the said schedule hereto be paid by them out of the assets respectively of , deceased, and , deceased, in their respective hands as legal personal representatives respectively of the said and , deceased, to be administered in a due course of administration if the said respectively have in their hands so much to be administered.

And it is ordered that the remainder of the said application do stand over.

THE SCHEDULE.

1.	2.	3.	4.	5.	6.	7.	8.
Serial No. on List.	Name and Address.	Descrip- tion.	In what Character in- cluded.	No. of Shares.	Total Amount of Call due.	Propor- tion of Costs.	Total Amount due exclusive of Interest.
			As a present Member.		£ s. d.	£ s. d.	£ s. d.
			As Executrix of J. B.				

Registrar.

Order to be endorsed as follows :—

If you, the said , neglect to obey this order by the time mentioned therein, you will be liable to process of execution for the purpose of compelling you to obey the same order.

No. 193.

[Title, &c., No. 1.] (65.)

**Affidavit
of service
of order
for pay-
ment of
call.**

1. I did on the day of 189 , personally serve G. F., of , in the county of , &c., with an order made in this matter by this Court, dated the day of 189 , whereby it was ordered [*set out the order*] by delivering to and leaving with, the said G. F., at , in the county of , a true copy of the said order, and at the same time producing and shewing unto him, the said G. F., the said original order.

2. There was indorsed on the said copy when so served the following words, that is to say, "If you, the under-mentioned [*within named (a)*] G. F. neglect to obey this order by the time mentioned therein [*therein limited (a)*] you will be liable to process of execution [*for the purpose of compelling you to obey the same order (a)*]."

No. 194.

[Title No. 1.]

**Affidavit
of non-
payment
of money
directed to
be paid
into the
Bank of
England
under Act
of 1862.**

1. G. F., the person named in an order made in this matter by [*fill in judge*], dated the day of 18 , has not paid into the Bank of England, to the account of the liquidator of the Company the whole or any part of the sum of £ , as by the said order directed.

[*or, in case of several parties.*]

1. None of the several persons whose names and addresses are set forth in the schedule hereunder written, and who have respectively been duly served with orders made in this matter by [*fill in judge*], of the respective dates set opposite to their respective names in the said schedule have paid into the Bank of England to the account of the liquidator of the Company, the whole or any part of the several sums of money set opposite to their respective names in the said schedule hereunder written, as by the said orders respectively directed.

2. I am enabled to depose to such non-payment, by reason of my having this day ascertained, by inquiry at the said bank, that such payment, [*or, payments*] has [*or, have*] not been made, and seen the certificate of payment in, numbered [*or, several certificates of payment in, the numbers whereof respectively are set forth in the sixth column of the said schedule, opposite the names of the said respective persons, being certificates*] furnished by me to the cashier of the said bank for delivery to the said G. F. [*or, several persons respectively*] upon such payment [*or, payments*] being made, still in the hands of the cashier of the said bank. No notice [*or, notices*] of such payment [*or, payments*] having been made has [*or, have*] been given to me by the said G. F. [*or, several persons respectively*].

THE SCHEDULE ABOVE REFERRED TO.

Name.	Address.	Descrip- tion.	Amount.	Date of Balance Order.	Number of Certificate.
			£ s. d.		

(a) The words in the thick brackets of 1862, by the Gen. O. 1862.
are used in windings-up under the Act

[*Title, &c., Nos. 1 and 3.*]

that H. J. L., the liquidator of the above-named company, may be at liberty to bring and prosecute actions if necessary, and take all other proper proceedings against the persons hereinafter mentioned, or such of them as he may be advised, in respect of unpaid calls in arrear previous to the said parties ceasing to be holders of shares in the above-named company, and that the said persons may be ordered to pay the costs of this application.

[*The persons above referred to.*]

No. 195.

Summons for leave to bring actions to enforce calls.

[*Title, &c., Nos. 1 and 3.*]

that A. B., of, &c., a contributory, as being a past shareholder of the above company, who ceased to be a member within a year before the commencement of the winding-up, do on or before the, &c., pay to C. D., the liquidator of the said company, at, &c., the sum of, &c., being a call of, &c.

No. 196.

Summons for call on B. contributory.

COMPROMISES.

[*Title No. 1.*]

No.

In the matter of _____, Limited.

M. holder of _____ shares; liability £ _____.

No. 197.

Questions as to means, and form of affidavit verifying answers.

Questions to be answered by Shareholders desirous of compromising amount due in respect of Calls.

1. What property do you possess; and what is its nature and value to the best of your knowledge and belief?

(Specify the particulars, if necessary, in the separate signed list or schedule marked A.; and accompany the statement with valuations, certified rentals, and other evidence of value, by competent parties.)

2. Have you, since the _____, either as security for your debts or otherwise, sold, given, transferred, or conveyed away in trust or otherwise, or placed under the charge, or in the custody of any person or persons, or in any way put away, set aside, or concealed any property, money, stock, shares, securities, or effects of any kind? If so, state the particulars and value, and present position of such property so alienated. Or have you, since _____ renounced, or discharged, or given up any right of any kind which you then had? If so, state the particulars thereof.

3. What is your regular or average annual income; and from what sources is it derived?

(Specify the particulars, if necessary, in the separate signed list or schedule marked B.)

4. What debts or obligations are owing by you besides the calls for which you are liable as a shareholder of the _____?

(Specify the particulars, if necessary, in the separate signed list or schedule marked C.)

5. Have you any expectation of funds or property of any kind coming to you by succession or otherwise? If so, state its nature and probable value.

No. 197.

6. Is your life insured? If so, give particulars.
 7. Are you interested in any settlement made on marriage or otherwise?
 8. State any circumstances connected with yourself, or those dependent on you, which you may wish to be considered along with your application.
 9. What sum or other consideration do you offer for a discharge in full of all claims by the Official Receiver and liquidator against you as a shareholder of the _____, Limited; and in what manner do you propose it shall be secured or paid?

ANSWERS.

The details under 1, 3, and 4 may be given under separate signed Schedules, marked A., B., C., respectively.

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.

(Signature.)
 (Date.)

The above answers should be verified by affidavit as set forth on the next page.

[Title No. 1.]

I, _____ of _____, make oath and say as follows:—

That the several matters and things contained in the answers written on the preceding page (a) [and in the schedules A., B., and C.] and which are signed by me as relative hereto, are full, true, and correct answers to the foregoing printed questions to the best of my knowledge, information, and belief.

No. 198.

Affidavit
of liqui-
dator as
to a com-
promise.

[Title, &c., No. 1.]

1. By an order, dated the _____ day of _____ [fill in name], one of the directors of the said company was ordered to pay to me the sum of £ _____, and by another order, dated the _____ day of _____ [fill in name and description], was ordered to pay to me the sum of £ _____, being the sums for which such persons respectively are liable in respect of [state particulars].

2. Such orders were personally served on the said _____ and _____ respectively, and pressure was put upon such persons to induce them to comply with such orders. I and my solicitors have made inquiries as

(a) If schedules not required, strike out these words.

to the means of the said respective persons [*state if he has been cross-examined as to his means on his affidavit*], and having regard to the result of such inquiries, I say that it is, in my opinion, desirable in the interests of the creditors of the said company to accept from the said _____ and _____ respectively, the sums of £ _____ and £ _____, in full discharge of their liability. I believe that if such orders were enforced by execution or otherwise, or expense incurred in bankruptcy proceedings against such person, so large an amount would not be recovered.

No. 198.

[Title No. 1.]

Memorandum of agreement entered into this _____ day of _____ 18 _____, between H. J. L., of, &c., the liquidator of the above-named company, of the one part, and S. B., of, &c., one of the contributories of the said company, of the other part.

Whereas the said S. B. has been settled on the list of contributories of the said company as a contributory in respect of _____ share in the said company. And whereas, [by an order made by *[judge]*], dated the _____ day of _____ 18 _____,] a call of £ _____ per share was made on all the contributories of the said company, and there is now due from the said S. B. to the said company the sum of £ _____ in respect of the said call. And whereas the said S. B. has proposed to pay to the said liquidator the sum of £ _____ by way of compromise, and in satisfaction and discharge of the said sum of £ _____, and of all liability whatsoever, as a contributory of the said company. And whereas the said liquidator, having investigated the affairs of the said S. B., and believing that such compromise will be beneficial to the said company, hath, in exercise of the power for that purpose given to him by the above statute, agreed to accept the same, subject to the sanction of the [Court, or Committee of Inspection] and to the conditions and agreements hereinafter contained. Now it is hereby agreed by and between the said parties hereto:—

1. That the said liquidator shall, before the _____ day of _____ next, apply to the [Court, or Committee of Inspection] to sanction the agreement of compromise.

2. That upon this agreement being sanctioned the said S. B. shall within _____ days next after such sanction, pay to the said liquidator the said sum of £ _____, and when thereto required, shall do and execute all such acts and deeds as may be necessary for transferring, or surrendering and releasing to the said liquidator on behalf of the said company, or in such manner as may be directed, the said shares held by the said S. B. in the said company, and all claim and demand whatsoever which the said S. B. has, or may have, against the said company in respect of the said shares, or the distribution of the assets of the said company, or otherwise howsoever.

3. That the said sum of £ _____, and the transfer or surrender and release of the said shares and interest of the said S. B., as aforesaid, shall be accepted by the said liquidator as, and be deemed and taken to give to the said S. B. a full and complete discharge from all calls and liabilities, claims and demands whatsoever, which the said company, or the liquidator thereof now has or may hereafter have, or be entitled to against the said S. B., in respect of his being or having been the holder of the said shares, or otherwise, as a contributory of the said company.

4. That in case this agreement shall not be sanctioned as aforesaid, it shall cease and determine, and the said liquidator and the said S. B.

No. 199.

Memorandum of agreement of compromise with a contributory.

No. 199.

shall be remitted to their original rights with respect to each other, as if this agreement had not been entered into.

5. That in case this agreement shall be sanctioned, and the said S. B. shall not in all respects perform the same on his part, the liquidator shall be at liberty, with the sanction of the [Court, or Committee of Inspection], and without notice to the said S. B., to enforce the performance thereof, or, with the like sanction, to give notice to the said S. B. that he abandons this agreement, whereupon the same shall cease and determine, and the said liquidator shall be entitled to proceed against the said S. B. to enforce payment of the said sum of £ , or so much thereof as shall then remain due and unpaid, as if this agreement had not been entered into.

No. 200.

Applica-
tion to
sanction
comprom-
ise.

[Title, &c., No. 1.]

that H. J. L., the liquidator of the above-named company, be at liberty to accept from C. D. the sum of £ , together with £ for costs, in the whole, £ , in discharge of the said C. D.'s liability as a contributory of the said company and otherwise and in discharge of all claims of the said company against him. And that the agreement for compromise dated, &c., and made, &c., be sanctioned.

EVIDENCE AND EXAMINATION OF WITNESSES.

No. 201.

Summons
for per-
sons to
attend at
chambers
to be ex-
amined.

[Title No. 1.] (42.)

A. B., of, &c., and E. F., of, &c., are hereby severally summoned to attend at (a), in the county of , on the day of 18 , at of the clock in the noon, to be examined on the part of the Official Receiver [or the liquidator] for the purpose of proceedings directed by the Court to be taken in the above matter. [And the said A. B. is hereby required to bring with him and produce, at the time and place aforesaid, a certain indenture [*describe documents*], and all other books, papers, deeds, writings, and other documents in his custody or power in anywise relating to the above-named company.]

Dated this day of 189 .

This summons was taken out by Messrs. C. and D., of , in the county of , Solicitors for .

No. 202.

Summons
for ex-
amination
under s.
115.

[Title, &c., Nos. 1 and 3.]

that for the purposes of proceedings now pending in the winding-up of the above-named company, the liquidator of the said company may be at liberty to examine &c., of, &c. &c. and of, &c. under section 115 of the Companies Act, 1862, and that it be referred to the examiner of this Court in rotation to take the said examination.

(a) State place of examination.

that A. B. do attend at, &c., to be examined by the liquidator of the above-named Court under section 115 of, &c., for the purpose of giving information concerning his dealings with the said company, and with, &c. And it is ordered that the said A. B. produce at the time and place aforesaid all, &c. [*set out books and papers, &c., to be produced; see other forms*], and all other books, papers, deeds, writings, and other documents in his custody or power in anywise relating to the said company or, &c.

No. 203.

Order to attend under s. 115 with books, &c.

that the applicants be at liberty to attend at their own expense upon the examination of any person or persons examined by or on behalf of A. B. as such liquidator before the examiner of this Court, and to examine and cross-examine such witnesses or persons as they may be advised. And that the said A. B. do give notice to the applicants or their solicitors of all such examinations (a).

No. 204.

Order that contributories may attend examination under s. 115.

MISCELLANEOUS.

[Title No. 1.] (3.)

Upon the application of (b) and upon hearing and upon reading it is ordered that the said proceedings be transferred from the (c) Court to the (d) Court.

Dated this day of 189 .

No. 205.

Order of transfer.

[Title No. 1.] (4.)

The proceedings in the winding-up of the above-named company have been, by order dated the 18 , transferred to this Court from the [High Court] or [the County Court of , holden at , or as the case may be] and have had the above letter and number allotted to them. The letter and number before transfer were .

Dated this day of 189 .

No. 206.

Notice of transfer of proceedings to the Board of Trade and Official Receiver.

[Title No. 1.] (83.)

We, the Committee of Inspection in the above matter, hereby certify that a sum of £ , forming part of the assets of the above-named company, has been invested in Government Securities, and that the sum of £ is now required to answer demands in respect of the said company. And we request that so much of the said securities as may be necessary for the purpose of answering such demands, may be realized by the Board of Trade, and that the amount realized may be placed to the credit of the said company.

Dated this day of 189 .

No. 207.

Request by committee of inspection to Board of Trade to sell securities.

_____ } Committee of Inspection.

(a) This was made on an application by contributories for leave to issue summons under s. 115, the liquidator electing to take proceedings. See *Silkstone and Dodworth Coal Co.*, 19 Ch. D. 118.

(b) Name of applicant.
(c) Court from which the transfer is to be made.
(d) Court to which the transfer is to be made.

No. 208.

Certificate
and re-
quest by
committee
of inspec-
tion as to
invest-
ment of
funds.

[Title No. 1.] (84.)

We, the Committee of Inspection in the above matter, hereby certify that in our opinion the cash balance standing to the credit of the above-named company is in excess of the amount which is required for the time being to answer demands in respect of such company's estate, and request that the Board of Trade will invest the sum of £ in Government Securities, to be placed to the credit of the said account for the benefit of the said company.

Dated this day of 189 .

_____ } Committee of Inspection.

MISFEASANCE.

No. 209.

Summons
under s. 10.

[Formal parts, No. 1.]

that it may be declared that A. B., C. D., and E. F., directors [or as the case may be] of the above-named company, were guilty of misfeasance and breach of trust in relation to the above-named company, inasmuch as [set out concisely the acts of misfeasance], and that they are jointly and severally liable to the said company and to G. H., as the liquidator thereof, to the extent of £ , together with interest thereon from the date of such misfeasance and breach of trust, and also are so liable to make good any loss which the said company may have sustained by reason of such misfeasance or breach of trust. And that the respondents may be ordered to pay to the applicant his costs of and relating to this application, such costs to be taxed by the taxing-master, or that such other order may be made in the premises as the nature of the case may require.

VOLUNTARY WINDING-UP (a).

No. 210.

Notice of
meeting
to pass re-
solution
to wind
up volun-
tarily,
and to
appoint
liquidator.

The Company, Limited.

Notice is hereby given that an extraordinary general meeting of this company will be held on the day of instant, at of the clock in the noon, at , for the purpose of considering, and, if it is thought proper, passing the following resolutions:—

“That it has been proved to the satisfaction of the company that the company cannot by reason of its liabilities continue its business, and that it is advisable to wind up the same, and that accordingly the company be wound up voluntarily.

“That A. B., of, &c., be and he is, appointed liquidator for the purpose of winding up the affairs of the company.”

Dated this day of 18 .

By order of the Directors,

E. F.,
Secretary.

(a) Several forms now in use under the Rules of 1890 will be found useful in a voluntary winding-up with slight alteration.

"That the liquidators are hereby authorized, without any further authority, to exercise all the powers contained in sections 159 and 160 of the Companies Act, 1862, and in particular to carry on the negotiation with," &c.

No. 211.

Resolution giving liquidator general power of compromise (a).

No. 212.

Notice of extraordinary resolution for voluntary winding-up.

At an extraordinary general meeting of the above-named company, duly convened and held at on the day of 18 , the following extraordinary resolutions were passed:—

[For resolutions, see forms *supra*.]

[To be signed by the chairman and his signature witnessed. In country cases the witness to make declaration, unless he be a solicitor whose name appears in the current Law List.]

No. 213.

Notice of special, and confirmatory resolution.

At an extraordinary general meeting of the above-mentioned company, duly convened and held at on the day of 18 , the following special resolutions were duly passed, and at a subsequent extraordinary general meeting of the said company also duly convened and held at the same place on the day of 18 , the following special resolutions were duly confirmed, viz.:—

[For resolutions, see forms *supra*.]

[To be signed by the chairman of the second meeting and his signature witnessed. In country cases the witness to make declaration, unless he be a solicitor whose name appears in the current Law List.]

No. 214.

Notice of meeting to pass special resolution to wind up.

The Company, Limited.
Notice is hereby given that an extraordinary general meeting of The Company, Limited, will be held at on day the day of at o'clock in the noon for the purpose of considering and, if thought proper, passing the following resolution, that is to say,
"That the Company be wound up voluntarily under the provisions of the Companies Act 1862 to 1890."
Dated, &c.

No. 214A.

Notice of second meeting to confirm special resolution and appoint liquidator.

The Company, Limited.
Notice is hereby given that an extraordinary general meeting of the above-named Company will be held at on day the day of at o'clock, when the following resolution which was passed at the extraordinary general meeting of the Company, held the day of , will be submitted for confirmation as a special resolution, "That, &c." [*resolution as above*].

Should the resolution be confirmed, a further resolution will be proposed at the same meeting for the appointment of A to be liquidator for the purposes of such winding-up, and to fix his remuneration.

Dated, &c.

(a) It may sometimes be useful to take a general power of compromise. In this case, the above will be the third resolution passed.

No. 215.

Notice to contributories of settlement of list.

In the matter of the Companies Acts, 1862 to 1890.
And in the matter of the Company, Limited.

Take notice that , the liquidator of the above-named company, has appointed the day of , at o'clock in the [fore] noon at his office, No., &c., to settle the list of contributories of the said company made out by him, and that you are included in such list as appears in the schedule hereto; and that if you do not shew sufficient cause to the contrary at the time aforesaid, the list will be settled by the said liquidator including you therein.

Dated the day of .

H. J. L.,
Liquidator.

To Mr. .

THE SCHEDULE.

No. on List.	Name.	Address.	Description.	How included.	Number of Shares.
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No. 216.

Notice of call.
Voluntary winding-up.

Take notice that on the day of I, of , the liquidator of the above-named company, made a call of per share upon the contributories of the said company, and that there is due from you in respect of the call so made the sum of . You are hereby required to pay the said sum to me at my office, No. , on or before the day of next. In default of payment, interest at the rate of per cent. per annum will be charged upon any amount remaining unpaid after the above date.

Dated, &c.

H. J. L.,
Liquidator.

To Mr. , of .

[Title, &c., No. 1.]

No. 217.

Application by liquidator in voluntary winding-up to enforce calls.

that the several persons named in the second column of the schedule hereto being contributories of the above-named company do on or before the day of 18 , or within four days after service of the order to be made hereon, pay to H. J. L., the liquidator of the said company at his office, No., &c., the several sums set opposite to their respective names in the sixth column of the said schedule hereto, such sums being the amounts due from the said several persons respectively in respect of the call of per share made by the said liquidator, and also that the said, &c., do respectively each pay [as to costs].

THE SCHEDULE REFERRED TO.

No. on List.	Name.	Address.	Description.	In what Character included.	Amount due.
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[Title, &c., No. 1.]

that an inquiry be made, what are the debts of the above-named company. And that the day of 18 , may be fixed as the day on or before which the creditors of the said company are to send their names and addresses, and the particulars of their debts or claims, and the names and addresses of their solicitors (if any) to A. B., of, &c., the solicitor for the liquidators of the said company, and that, if so required by notice in writing from the said liquidators by their solicitors, such creditors do come in and prove their said debts or claims at the chambers of the said judge at such time as shall be specified in such notice. And that in default thereof such creditors be excluded from the benefit of any distribution made before such debts are proved. And that such advertisements be forthwith issued in such newspapers as the judge shall direct for the purpose of carrying out the order to be made hereon.

No. 218.

Applica-
tion for an
inquiry as
to the
debts of
company.

[Title, &c., No. 1.]

that the creditors of the above-named company shall on or before the day of 18 , send their names and the particulars of their debts or claims to A. B. and C. D., as the liquidators of the said company. And that the advertisement for such creditors be inserted in the following newspapers, that is to say [*set out papers*], and do appear in such newspapers [*set out the number of times, or insert particulars in a schedule (a)*].

No. 219.

Applica-
tion to
fix time
for claims
against
company.

Schedule, &c.

[Title, &c., No. 1.]

that A. B. and C. D., the liquidators of the above-named company, may be at liberty to leave and pass in the chambers of the judge their accounts as the liquidators of the above-named company (a).

No. 220.

Applica-
tion for
liberty to
pass ac-
counts.

[Title, &c., No. 1.]

that A. B. be removed from being liquidator of the above-named company. And that some proper person or persons be appointed to act in his stead as liquidator or liquidators in the winding up of the affairs of the said company [*or, state here person to be appointed*], and that the said A. B. do render his final account as such liquidator, and do deliver over to such new liquidator or liquidators when appointed [*or, to above person if stated*], all property, cash-books, documents and papers of the said company in his custody, possession or power. And that the costs of the applicants be paid out of the assets of the said company.

No. 221.

Applica-
tion for
removal
of volun-
tary liqui-
dator.

(a) See the practice under the Act of 1862, which will apply.

[Title, &c., No. 1.]

No. 222.
Applica-
tion by
liquidator
for ac-
count and
payment
from
former
liquidator.

that A. B. and C. D. do on or before the, &c., leave in the chambers of the judge a full, true, and particular account duly verified by affidavit of all moneys, securities for money, assets and effects of the said company received by or allowed to them come to the hands of the said A. B. and C. D., or either of them, or to the hands of any other person or persons by their or either of their order, or for their or either of their use, and of all payments made by them on account or in respect of the said company from the day of , the date of their appointment as liquidators of the said company, to the day of . And that the said A. B. and C. D. do pay to the applicant as liquidator of the said company the balance which shall be certified to be due from them on taking such account within days after the date of the chief clerk's certificate allowing such account.

No. 223.
Convey-
ance on
sale by
voluntary
liquidator.

This Indenture, made the day of , between the Com-
 pany, Limited (hereinafter called the company), of the first part, A. B.
 of the liquidator of the company of the second part, and C. D. of
 of the third part. Whereas at an extraordinary general meeting
 of the shareholders of the company duly convened and held at on
 the day of , a special resolution of the company was passed
 to the effect, that it had been proved to the satisfaction of its members
 that the company could not by reason of its liabilities continue its busi-
 ness, and that it was advisable to wind up the same, and that the said
 A. B. should be, and he was thereby appointed, liquidator for the purpose
 of winding up the affairs of the company and distributing the property,
 and the said resolution was duly confirmed at an extraordinary general
 meeting of the said members held on the day of . And
 whereas the Company is now seised in fee simple in possession
 free from incumbrances of the hereditaments hereinafter conveyed.
 And whereas the said A. B. as such liquidator as aforesaid has agreed
 to sell the said hereditaments to the said C. D. for the like estate in
 possession free from incumbrances at the price of £ . Now this
 indenture witnesseth, that in pursuance of the said agreement and in
 consideration of the sum of £ paid by the said C. D. to the said
 A. B. (the receipt of which sum the said A. B. as such liquidator hereby
 acknowledges), the company (as beneficial owner) (a) by the direction
 (hereby testified) of the said A. B. as such liquidator doth hereby grant
 and convey, and the said A. B. as such liquidator as aforesaid doth
 hereby confirm unto the said C. D. All that, &c. [*here describe the*
property]. To hold unto and to the use of the said C. D. his heirs and
 assigns in fee simple. And the said A. B. doth hereby covenant with, &c.
 [*here insert the usual covenant against incumbrances.*]

(a) When a company is in course of being wound up, it is not usual to insert covenants for title, and it is generally so provided by the conditions of sale. These words will, therefore, as a rule, be omitted.

In all cases of liquidation under the Companies Acts the legal estate in land vested in the company at the time of the resolution or order for winding up the company remains vested in them, and can be conveyed only by the company, the liquidators using the company's

seal for the purpose. A conveyance by the liquidators alone is inoperative, and their grant or assignment by way of confirmation of the conveyance made by their use of the company's seal confers no additional efficacy on the conveyance: *Metropolitan Bank and Jones*, 2 Ch. D. 366.

Though the liquidators have no estate in the property, it is usual for them to confirm the conveyance made by their use of the company's seal. See *Dav.*, vol. ii. pt. 1, pp. 605-607.

In witness whereof the said A. B. as liquidator of the said Company, Limited, hath caused the common seal of the company to be hereunto affixed, and the other parties hereto have hereunto set, &c.

No. 223.

[Title as No. 210.]

No. 224.

Notice is hereby given, pursuant to section 142 of the Companies Act, 1862, that a general meeting of the members of the above-named company will be held on the day of 18 , at o'clock in the noon at in order that there may be laid before the said company an account shewing the manner in which the winding-up has been conducted and the property of the company has been disposed of; and in order that the said company may hear any explanation that may be given by the liquidators, and also in order that an extraordinary resolution may be passed for determining the manner in which the books, accounts, and documents of the said company and of the liquidators shall be disposed of.

Dated, &c.

} Liquidators.

Advertisement for calling final meeting.

[To be signed by the liquidators, or the solicitor for the liquidators, and the signature to be witnessed. In country cases the witness to make declaration, unless he be a solicitor whose name appears in the current Law List.]

[Title as No. 210.]

No. 225.

Notice is hereby given, pursuant to section 155 of the Companies Act, 1862, that a general meeting of the members of the above-named company will be held on the day of 18 , at o'clock in the noon at for the purpose of considering, and, if thought fit, passing an extraordinary resolution to the effect that the books, accounts, and documents of the above-named company, and of the liquidators thereof, shall be disposed of, &c.

Notice of meeting for resolution to dispose of books, &c.

[For Title, see No. 210.]

No. 226.

To the Registrar of Joint Stock Companies.

We beg to inform you that a general meeting of the above-named company was held on the day of 18 , in order to have an account laid before the company shewing the manner in which the winding-up had been conducted, and the property of the said company disposed of, and that such account was laid before the said company and was received and adopted.

Dated, &c.

} Liquidators.

Return to registrar of final meeting.

FORMS ON DISSOLUTION OF BUILDING SOCIETIES.

No. 227.

Deed with
trustee to
enable
him to
carry out
dissolu-
tion (a).

This indenture made the day of 18 , BETWEEN the
“ Benefit Building Society ” (hereinafter called the said society),
carrying on business at , in the county of , incorporated
under the Building Societies Act, 1874, of the one part, and (here-
inafter called the trustee) of the other part. Whereas the members of
the said society intend, immediately after the execution of these presents,
to execute an instrument of dissolution, to be dated the day next suc-
ceeding the date of these presents, pursuant to the Act, 37 & 38 Vict. c.
49, s. 32, and signed by not less than three-fourths of the members,
holding not less than two-thirds of the number of shares in the said
society, by which it will be agreed and declared that the said shall
be appointed trustee for the special purpose of the dissolution, and that
the society shall be dissolved. And whereas it has been agreed by the
said society that this deed should be executed in order to better enable
the said trustee to carry out the said dissolution. NOW THIS INDENTURE
WITNESSETH that in order to better enable the trusts of the said recited
indenture to be carried out, the said society doth hereby grant, assign,
transfer, convey and set over unto the said trustee, his executors,
administrators, and assigns, all and singular [*here set out property com-
prised in mortgages, or refer to a schedule*]. Together with, &c. To
HAVE AND TO HOLD the premises hereby granted, assigned, conveyed,
or expressed so to be, unto the said trustee, his executors, administrators,
and assigns, for the estates granted by and the residues now unexpired
of the terms of years granted by the said indentures of mortgage, and
subject to the mortgagor's right or rights to redeem, and to the several
covenants, conditions, and agreements in the said several indentures of
mortgage contained, and on the part of the society and its assigns to be
observed and performed. IN TRUST for the persons mentioned in and
the purposes defined by the said instrument of dissolution. AND THIS
INDENTURE ALSO WITNESSETH that for the purposes aforesaid the said
society doth hereby assign to the said trustee, his executors, adminis-
trators, and assigns, all and singular the principal and interest, sub-
scriptions, and other sums of money secured by the said indentures of
mortgage set forth in the said schedule hereto. And the full benefit of
the covenants, powers of sale, and other powers and provisions contained
in the same indentures for securing the payment of the same principal
sums and interest, subscriptions and other moneys, together with full
power to demand, sue for, and give effectual receipts and discharges for
the same respectively. To HAVE, RECEIVE AND TAKE the said principal
and interest, purchase moneys, redemption moneys, subscriptions, and
other moneys, and all other the premises hereby assigned, or expressed
so to be, unto the said trustee, his executors, administrators, and assigns.
IN TRUST for the persons mentioned in and for the purposes defined by
the said proposed instrument of dissolution. And the said society doth
hereby for itself and its successors covenant with the said trustee, his
heirs, executors, administrators, and assigns. That [*covenant against
incumbrances*]. In witness, &c.

(a) The above precedent is somewhat
altered from the form given in the
Treasury Regulations as to building

societies, as that form does not suffi-
ciently meet the requirements of a
voluntary winding-up.

The Building Societies Acts.
 "The Building Society."

No. 228.

Instrument of
 dissolution.

Register No. .

Instrument of dissolution made the day of 18 , pursuant to the Act, 37 & 38 Vict. c. 42, s. 32, and signed by not less than three-fourths of the members holding not less than two-thirds of the number of shares in the said society. It is agreed and declared as follows:—

1. The liabilities and assets of the society are the following:—

Liabilities.

Due to depositors, as per schedule (A)	.	.	.	.	£
„ investing shareholders, as per schedule (B)	.	.	.	.	£
„ other creditors, as per schedule (C)	.	.	.	.	£

Assets.

Due from borrowing shareholders, as per schedule (D)	.	.	.	.	£
„ cash at bankers . . . . .	.	.	.	.	£
„ other persons, if any . . . . .	.	.	.	.	£

2. The number of members is ; the number of shares is ; the amount standing to the credit of the members is £ .

3. The society owes to the depositors the sum of £ , and to the other creditors the sum of £ , and such sums shall be paid out of the first moneys which shall be received by the trustees hereinafter appointed, after payment of the costs and expenses of and incidental to the carrying into effect of this instrument, or in relation thereto.

4. After payment of the expenses of the dissolution, and of the claims of the depositors and the other creditors, the funds and property of the society shall be appropriated and divided among the members thereof in the proportion of the amount standing to each member's credit in the books of the society.

5. is hereby appointed a trustee for the special purpose of the dissolution, and shall be entitled to receive as remuneration £ per centum upon all sums of money which shall come into his hands under this instrument.

6. and are hereby appointed a committee of inspection to assist the trustee in winding up the society.

7. The trustee shall have all the powers conferred on a voluntary liquidator by the Companies Act, 1862, but shall only exercise those powers with the sanction of the committee. The trustees, with such sanction as aforesaid, shall also have power to agree with either of the borrowing shareholders for the redemption of their property, and shall thereupon reassign or surrender the property mortgaged by them. If the trustee shall be unable so to agree with them, or either of them, he shall receive the subscriptions due from them according to the rules of the society until they have paid by such subscriptions the sums set opposite their names respectively in the schedule hereto, together with the interest at the rate of five per cent. per annum from the 31st of December next on the balance of the said sum from time to time remaining unpaid. In case the said borrowing shareholders, or either of them, shall neglect to pay their or his subscriptions, or any part thereof, for calendar months, the said trustee shall have the same power to sell or lease the property mortgaged by them as the society has by virtue of its rules. The trustees shall divide the moneys received in monthly subscriptions among the investing shareholders at least once a year.

8. The committee shall meet when called together by the trustee.

No. 223. Written notices shall be posted to the addresses of each member. The committee shall meet once at least every year, and oftener if called together by the trustee, or by a notice signed by two members of the society.

9. In the event of either of the members of the committee, or in the event of the trustee dying or resigning, or leaving the country, or becoming incapable of acting in the discharge of these presents, a new member, or members of the committee, or a new trustee, may be appointed by the survivor or survivors of the committee.

No. 229.

Building Societies Acts.

Building Society. Registered No. .

Declara-
tion to ac-
company
instru-
ment of
dissolu-
tion.

I, , of , an officer of the above-named society, do solemnly and sincerely declare that the instrument of dissolution [*or*, the alteration of the instrument of dissolution] appended to this declaration is signed by not less than three-fourths of the members, holding not less than two-thirds of the number of shares in the said society.

And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

Taken and received before me, one of Her
Majesty's justices of the peace for the said
county of in the said county, this
day of 18 .

No. 230.

Building Societies Acts.

Building Society. Registered No. .

Notice of
com-
mence-
ment of
dissolu-
tion where
no instru-
ment of
dissolu-
tion is
executed.

To the Registrar of Building Societies,
28, Abingdon Street, Westminster.

Notice is hereby given, that, in pursuance of the rules of the above-mentioned society, or of the following resolution duly passed in pursuance of the rules of the society on the day of [*here state the terms of the resolution (if any) for dissolving the society*].

The dissolution of the society commenced on the day of .
(Seal of Society.)

Name and address to which registered }
copy is to be returned. }
Date 18 .

No. 231.

Building Societies Acts.

Building Society. Registered No. .

Notice of
termina-
tion of
dissolu-
tion.

To the Registrar of Building Societies,
28, Abingdon Street, Westminster.

Notice is hereby given, that, pursuant to the instrument of dissolution, [*or rules, as the case may be*] of the above-mentioned society, its liabilities have been discharged, and its assets collected and distributed, and all

other things done required to be done in respect of the dissolution of the said society, and that the dissolution thereof is now terminated.

No. 231.

The trustees for the purpose of
the dissolution.
[or, three members and the
secretary if the dissolution
is not by instrument.]

Name and address to which registered
copy is to be sent.
Date 18 .

RECONSTRUCTION.

The Company, Limited.

No. 232.

Notice is hereby given that an extraordinary general meeting of the company will be held at , on , the day of , at o'clock, for the purpose of considering, and, if thought fit, of passing the subjoined resolutions. If such resolutions shall be passed by the requisite majority, the same will be submitted to a subsequent extraordinary general meeting for confirmation as special resolutions.

Notice of
meeting to
wind up
volun-
tarily and
exercise
powers of
s. 161.

RESOLUTIONS.

1. That a reconstruction of the company is desirable, and that the company be therefore wound up voluntarily, and that of be, and he is hereby appointed liquidator for the purpose of such winding-up, [and that the remuneration of such liquidator for his services be fixed at the sum of £].

[2. That the said liquidator be, and he is hereby authorized to consent to the registration of a new company, to be named the Company, Limited, with a memorandum and articles of association, which have already been prepared with the privity and approval of the directors of this company.]

3. That the said liquidator be authorized, pursuant to s. 161 of the Companies Act, 1862, to sell and transfer all the undertaking and assets of the company to [the said new company], or to a new company upon the terms of the scheme of reconstruction now submitted to the meeting, and identified by the signature of the chairman.

A print of the proposed scheme accompanies.

By order of the Board,

Secretary.

London, E.C.
, 18 .

The Company, Limited.

No. 233.

Notice is hereby given that an extraordinary general meeting of the Company, Limited, will be held at , on , the day of 18 , at o'clock, when the subjoined resolutions, which were duly passed at the extraordinary general meeting of the company held on the day of 18 , will be admitted for confirmation as special resolutions.

Notice of
meeting to
confirm
resolu-
tions.

No. 233.

RESOLUTION.

[See previous form.]

A print of the proposed scheme accompanies.

By order of the Board,

Secretary.

London, E.C.

, 18 .

No. 234.

Scheme to
accompany
above
notices.

1. The proposed new company shall be formed under the provisions of the Companies Acts, 1862 to 1890, for the same or similar purposes to those described in the memorandum of association of the existing company (hereafter referred to as the old company), with a nominal capital of £ in shares of £ each, with power to increase and reduce the same, and to issue any new capital on any preferential or other terms.

2. The articles of association of the new company shall be the same as those of the existing company, subject to such additions and modifications, not inconsistent with the provisions of this scheme, as the liquidator or liquidators shall approve.

3. In consideration of the sale and transfer of the property of the old company to the new company, shares in the new company, with per share credited as paid up thereon, shall be issued under the direction of the liquidator or liquidators to such shareholders in the old company as shall accept the same within such time, not being less than days from the date of the notice calling upon the shareholders to accept the same, as the liquidator or liquidators may determine, in the proportions of shares in the new company to each share in the old company.

4. The remaining shares to which the liquidator or liquidators would be entitled for distribution among the shareholders of the old company, and which shall not be accepted by such shareholders within the time aforesaid, shall be issued or dealt with as the liquidator or liquidators shall direct.

5. The new company shall take over the assets of the old company as a going concern, and discharge all the debts and liabilities of the old company.

6. The new company shall be at liberty to issue such of the shares in the new company as shall not be issued under the direction of the liquidator or liquidators, under clauses 3 and 4 [*here state how these shares are to be issued*], and provisions shall be made in the articles of association for carrying out this scheme, and increasing the capital in the event of the same becoming necessary for any such distribution.

7. The new company shall pay all the costs and expenses of and incidental to the winding-up and dissolution of the old company and the carrying out of this scheme.

No. 235.

Agree-
ment of
sale by old
company
to new
company
in pur-
sueance
of the above
resolu-
tions (b).

An Agreement (a) made the day of 18, between the Company, Limited (hereinafter called the old company), and of the liquidator thereof of the one part, and the

(a) See also Form No. 237.

(b) A contract of this kind, in consideration of the exchange of shares in the new company for shares in the old company, share for share, does not require *ad valorem* duty under the Revenue Act, 1889. See Alpe on

Stamp Duties. This applies even though the terms of the contract be that the old company shall *sell* and the new company shall *purchase*. As to Stamp Act, 1870, see Inland Revenue v. Angus, 23 Q. B. D. 579.

Company, Limited (hereinafter called the purchasing company), of the other part. Whereas the old company was incorporated in the year , and registered under the Companies Acts, 1862 to 18 , with a nominal capital of £ divided into shares of £ each. And whereas of the said shares have been issued, and credited in the books of the old company as being fully paid up, and the remainder of the said shares have never been issued. And whereas by special resolutions of the old company passed at an extraordinary general meeting thereof held on the day of 18 , and confirmed at a subsequent extraordinary general meeting held on the day of 18 , it was resolved, &c. [*recite resolutions*]. And whereas the purchasing company has pursuant to the resolutions aforesaid been duly incorporated under the provisions of the Companies Acts, 1862 to 18 , with a nominal capital of £ divided into shares of £ each, for the following, amongst other objects, namely, to enter into and carry out the agreement therein referred to, being these presents. Now it is hereby agreed as follows, that is to say:—

1. The old company shall sell, and the purchasing company shall purchase, all those lands and mines, hereditaments and premises called respectively , or by whatsoever names known situate in the , and all and singular the goods, chattels, moneys, credits, bills, notes, and things in action of the old company, and the undertaking, business, and goodwill thereof, with the full benefit of all contracts and agreements, and of all securities in respect of the said things in action, to which the old company is entitled, and all other the real and personal property of the old company whatsoever and wheresoever; subject nevertheless as to all the said premises to the several incumbrances affecting the same or any part thereof.

2. The purchasing company shall be entitled to all debts and sums of money now due and owing or hereafter to become due and owing to the old company, whether under any existing contract with the old company or otherwise in connection with the business of the old company, and to all sums of money recovered or to be recovered as damages in any suit or action now pending brought by the old company in respect of breach of contract, or for any other matter or purpose connected with the business of the old company.

3. The purchasing company shall, as part of the consideration for the said sale, pay, satisfy, and discharge, all the debts, liabilities, and obligations of the old company whatsoever, including the costs and expenses of and incidental to the winding-up of the old company and of carrying the said sale into effect, and will adopt, perform, and fulfil, all engagements now binding on the old company, and will at all times indemnify and save harmless the old company and its liquidator, their estates and effects, and the contributories of the old company, of, from, and against, all actions, accounts, claims, and demands whatsoever for and in respect of any debts, costs, claims, liabilities, acts, matters, or things due, made, done, or omitted, or to become due, or to be made, done, or omitted, by the old company, or its liquidator, under the provisions of these presents, or otherwise in respect of the premises.

4. Every member of the old company shall as the residue of the consideration for the said sale be entitled in respect of each share therein held by him to require the purchasing company to allot to him, or to his nominee or nominees, upon application on or before days from the notice, &c., one share of £ with the sum of £ credited as paid up thereon, and the balance of £ shall be paid upon allotment. The acceptance of the terms of this agreement by members of the old company shall be deemed to be in full satisfaction

No. 235.

and discharge of all claims and demands whatsoever in respect of their interests in the assets of the old company. The purchasing company will as soon as possible after the filing with the registrar of joint stock companies of this or a proper agreement for the purpose (which the purchasing company hereby agrees forthwith to effect) allot the said shares as herein proved. The purchasing company shall not be bound to see to the proper application, and distribution, of the said shares, nor be answerable for the loss or misapplication or non-application thereof.

5. In the event of the liquidator of the old company being compelled, in order to carry the said sale into effect, to purchase the interest of any member of the old company, then, and in every or any such case, the provisions of clause 4 hereof shall not be binding, and the purchasing company shall pay to the liquidator of the old company such sums as may be necessary to purchase the interest held by such dissenting members in the old company, and to cover all costs and expenses incurred by the liquidator of the old company, or the old company, in and about such dissent. The sums payable in respect of such purchase shall be [*Here insert how sum is to be arrived at, as for instance:—such sum as may be settled by arbitration between the old company and such member, or by agreement made with the sanction of the purchasing company between him and the liquidator of the old company.*] Provided always that until such sums have been paid or secured to the liquidator of the old company, the old company or its liquidator shall not be bound to convey or deliver over to the purchasing company any of the said property and premises, and until the same shall be paid or secured the liquidator shall be at liberty to retain possession of all or any part of the said property and premises, and thereout at his discretion to raise and pay such moneys or any part thereof, and the old company and its liquidator shall have a lien upon the whole of the said property for all moneys, if any, payable by the purchasing company under this clause.

6. Notwithstanding anything herein contained, if, in order to carry the said sale into effect, it would be necessary for the liquidator to purchase the interests of members holding more than _____ shares in the old company, the purchasing company shall be at liberty, by notice in writing addressed to the liquidator of the old company and left at the registered office of that company to rescind this agreement.

7. The purchasing company shall accept without investigation such title to the said property and premises as the old company possesses, and the old company or its liquidator shall not be required to enter into any covenant other than a covenant that they have not encumbered.

8. The conveyance or conveyances of the said premises to the purchasing company shall be prepared and completed at its expense as soon as conveniently may be, but without prejudice to clause 5 hereof, and the old company and its liquidator shall execute and do at the expense of the purchasing company all such assurances and things as shall be reasonably required by the purchasing company for vesting in it the property agreed to be hereby sold, and giving it the full benefit of this agreement, and in the meantime the old company shall stand possessed of the property agreed to be hereby sold in trust for the purchasing company.

9. It shall be lawful for the purchasing company in the name or names of the old company or its liquidator, but upon the condition of keeping them indemnified against all costs and damages which might arise thereby, to bring, take, and defend, actions and proceedings, and to do all other things which shall be necessary or expedient for obtaining the full benefit of the said sale.

10. These presents are intended to operate as an agreement only, and not as a conveyance, transfer, or assignment.

No. 235.

11. Until the dissolution of the old company, the purchasing company shall at its own expense produce and show, at such times, and to such persons, and in such places as the liquidator for the time being of the old company shall require, all the books, documents and papers of the old company agreed to be hereby sold.

In witness whereof the said companies have caused their respective common seals to be hereunto affixed, and the said liquidator has hereunto set his hand the day and year first above written.

Each of the holders of debentures of the old company shall surrender to the purchasing company to be cancelled the debenture or debentures of the old company held by him or her, and the purchasing company shall issue to him or her free of charge one share in the capital of the purchasing company with credited as paid up thereon for every sum of due to him or her in respect of the principal moneys upon the surrendered debentures and for the interest due in respect of the surrendered debentures up to the day of , and the said shares so to be issued shall be accepted in satisfaction of all claims in respect of the surrendered debentures, and the holders of the said debentures agree to pay the further instalments on the said shares when called upon.

No. 236.

Surrender
of debentures
for
shares.

Memorandum of Agreement made this day of between the Company, Limited (hereinafter called "the old company"), and A. B., of, &c., the liquidator appointed to conduct the winding-up of the "old company" (hereinafter called the liquidator) of the one part, and C. D. of, &c., as agent or trustee for a company intended to be incorporated under the provisions of the Companies Acts, 1862 to 1890, as a company limited by shares under the name of the Company, Limited (or such other name as may be hereafter agreed upon), (hereinafter called "the new company"), of the other part. Whereas the old company was incorporated by registration under the Companies Acts, 1862 to , on the day of with a nominal capital of £ divided into shares of £ each. And whereas the old company issued shares, but previous to the order to wind up the company hereinafter referred to shares in the company had been forfeited, and upon shares there were arrears of call owing at the date of the winding-up, and which had not since been paid, leaving shares upon which the sum of £ per share has been fully paid up. And whereas by an order of the of the Court , dated the day of , the old company was ordered to be wound up compulsorily by the said Court under the provisions of the Companies Acts, 1862 to 1890, and by another order dated the day of , the said A. B. was appointed the liquidator to conduct the winding-up thereof. And whereas in order to effect a reconstruction of the old company, the liquidator of the old company has contracted and agreed with the said C. D., as such agent or trustee for the new company as aforesaid, for the sale to him of all the estate and interest of the old company and of the liquidator in the property, plant, machinery and effects, and all choses in action and property of the company of whatsoever kind,

No. 237.

Agreement for
sale and
transfer to a
proposed new
company on
reconstruction
where
winding-up
is by
the Court.

No. 237.

upon the terms hereinafter mentioned. Now, therefore, it is hereby agreed as follows:—

1. The said C. D. shall, within one week after this agreement shall be approved of as hereinafter mentioned, cause to be incorporated a company to be called “The Company, Limited” (or such other name as may be hereafter agreed upon), with a capital of not less than £ divided into shares of £ each, and the articles of association thereof shall adopt this contract and empower the directors thereof to carry out the same.

2. The old company by the liquidator thereof shall sell, and the said C. D. as trustee for the new company as aforesaid shall purchase and take over (without investigation of the title of the old company thereto), all and singular the property movable and immovable, undertaking, works, goodwill, business and effects of the old company, together with all contracts, agreements and debts, both secured and unsecured, and the benefit of all securities which the old company has entered into or is entitled to, and all other the real and personal property and choses in action of the old company whatsoever and wheresoever, but subject nevertheless as to all the said premises, to any mortgages, charges, liens and incumbrances (if any) now affecting the same or any part thereof.

3. The consideration for such sale and transfer shall be as follows:—

(a.) The new company shall issue to the shareholders in the old company whose shares have been or may be fully paid up upon their applying for the same within [*here state time*] and upon paying the sum of 1s. per share upon such application, and agreeing to pay the remaining 4s. per share at the times hereinafter mentioned, one share in the new company credited with the sum of 15s. as having been paid up thereon for each share fully paid up held by such shareholder in the old company. The balance in respect of every such share, namely, 4s., shall be payable 1s. upon allotment and the remaining 3s. by such calls not exceeding 1s. each, as the directors of the new company shall from time to time determine, but so that there shall be an interval of not less than three months between the respective times for payment of every such call.

(b.) The new company shall take over all the debts and liabilities of the old company, and shall pay, satisfy and discharge the same, and shall at all times hereafter indemnify the old company and the liquidator thereof from and against the same and all claims and demands which may have been or which may at any time hereafter, until the close of the liquidation thereof, be made upon or attach to such old company, or its liquidator, and shall pay all the costs, charges and expenses of and incident to the liquidation of the old company, and the formation and incorporation of the new company and the carrying of this scheme of reconstruction into effect.

4. The liquidator shall, within one week after the incorporation of the new company, furnish the directors of the new company with a list of the shareholders in the old company whose shares have been fully paid up, and who are entitled to apply for and receive shares in the new company in pursuance of the terms of this agreement, and thereupon the new company shall offer the shares in the new company, and shall allot the same to such holders in manner hereinbefore provided upon receiving applications for the same within the time hereinbefore mentioned.

5. All shares in the new company not applied for by shareholders in the old company within such time as may be determined on by the directors of the new company may be issued [*here state how to be issued*],

and the shareholders in the old company who do not apply within the time limited by the directors of the new company, as aforesaid, shall have no claim whatever upon the same.

6. Before the issue of any such shares as aforesaid, all proper agreements shall from time to time be filed with the Registrar of Joint Stock Companies to provide for the same being duly credited in the books of the company with the amount of 15s. per share paid up thereon or such other amount as may be agreed upon.

7. The old company by the liquidator shall as soon as conveniently may be (subject to clause 8 hereof) execute and do at the expense of the new company all such assurances and things as shall be reasonably required by the new company for vesting in it the property hereby agreed to be transferred and conveyed or any part thereof, and giving to it the full benefit of this agreement, and in the meantime subject as aforesaid the old company shall stand possessed of the property agreed to be hereby sold in trust for the new company.

8. Provided always that the old company shall have a lien upon the whole property agreed to be hereby transferred for all moneys payable by the new company under this agreement, and until the same shall have been paid, the liquidator shall be at liberty to retain possession of all or any part of the said property and thereout at his discretion to raise and pay such moneys or any part thereof.

[9. If any dispute or difference shall rise between the parties hereto touching the subject matter of this agreement or the construction thereof, or anything connected therewith, the same shall be referred to two arbitrators or an umpire, pursuant to the provisions contained in the Arbitration Act, 1889, or any then subsisting statutory modifications thereof.]

10. In the event of the said intended new company not being formed and registered within the time specified in the first clause of this agreement, or of its being formed and being unable by reason of its having an insufficient amount of capital subscribed to carry out within three months of its incorporation the terms aforesaid, or in the event of the sanction of the judge not being given hereto, this agreement shall cease and determine, and the rights of the respective parties shall be the same as if this agreement had not been entered into, and the respective parties hereto shall not have any claim against the other for compensation, or expenses, or otherwise, in relation thereto.

11. This agreement is subject to the approval of the judge exercising the jurisdiction in companies winding-up.

12. This agreement is entered into by the said C. D. simply as trustee for the said intended company, and he shall be under no personal liability in respect to the same.

As witness the hands of the said parties hereto—

The Company, Limited
(In liquidation).

A. B., Liquidator.

Witness to the signatures, &c., C. D.

No. .

FORM OF APPLICATION FOR SHARES.

To the Directors of the Company, Limited.

I, the undersigned, being a shareholder of the Company, Limited, in liquidation, and having paid to your bankers the sum of £ : s. (being a deposit of 1s. per share), request that you will allot me

No. 238.

Applica-
tion for
shares by
share-
holders in

No. 238.

old com-
pany pur-
suant
to the
scheme(a).

£1 shares in the Company, Limited, credited with 15s. as paid up thereon, and I hereby agree to accept such shares and to pay the further instalments when called upon, in accordance with the agreement for the sale of the property to this company, dated the day of , and I agree to be bound by the memorandum and articles of association of the company; and I authorize you to place my name upon the register of members of the company for the shares allotted to me.

The shares are applied for on condition that they are issued to me as credited with 15s. paid up in respect of each share, in accordance with the said agreement, and I authorize X. Y. to sign, on my behalf, an agreement providing for the issue of such shares as credited with 15s. paid up in respect thereof (a).

(Signature)

(Full name)

(Address)

(Description)

Any shareholder desiring to pay up in full on allotment will please sign the following form:—

I desire to pay up in full on allotment.

(Signature)

Date day of .

BANKERS' RECEIPT FOR DEPOSIT ON APPLICATION.

Received this day of , of , the sum of pounds shillings, being a deposit of 1s. per share on an application for £1 shares in the Company, Limited.
For Bank, Limited.

£ : :

This form to be presented to the banker intact, who will return the receipt to the applicant, who must retain the same until exchanged for certificate.

NOTE.—The certificate for shares in the Company, Limited (in liquidation), together with the bankers' receipts for amounts payable upon application and allotment, will have to be handed over in exchange for certificate in this company.

No. 239.

Agree-
ment (for
registra-
tion pur-
suant to
s. 25, Com-
panies
Act, 1867),
for issue
of shares
partly
paid up.

Memorandum of Agreement made the day of , between the Company, Limited, whose registered office is situated at No., &c. (hereinafter called "the company"), of the one part, and X. Y. of, &c., as trustee and agent for and on behalf of the several persons whose names are entered in the schedule hereto (hereinafter called "the scheduled applicants"), of the other part.

Whereas by a memorandum of agreement dated the day of , and made [here recite the agreement]. And whereas the company was duly incorporated under the provisions of the Companies Acts, 1862 to 1890, on the day of , and memorandum and articles of association of the company were duly registered, and by a contract under seal dated, &c., endorsed on the said agreement, the company in pursuance of the said agreement, and to give effect thereto, ratified and adopted the said agreement, and declared the same to be binding on

(a) The Memorandum of Association will be printed on the back.

the company as if it had been incorporated before the date of the contract, and had entered into it instead of the said A., ratified and confirmed the agreement hereinbefore referred to and set forth in the schedule to the said articles of association. And whereas the scheduled applicants being respectively holders of shares in the old company, or the nominees or transferees of such holders, have in pursuance of the hereinbefore recited agreement applied for and agreed to take such respective number of shares as are set opposite to their respective names in the third column of the schedule hereto credited with the sum of fifteen shillings per share as paid up thereon, and have paid to the bankers of the company the respective sums payable upon application for the said shares, being one shilling per share upon each share intended to be allotted to them, and have agreed to pay the remaining four shillings per share in accordance with the terms of the said agreement, and it is accordingly intended to allot and issue to them respectively the shares in the company placed opposite to their respective names in the said third column of the said schedule bearing the respective distinguishing numbers which are set forth in the fourth column of the said schedule. And whereas it has been agreed that all shares so to be allotted shall be held as shares having the sum of fifteen shillings per share paid thereon in addition to the amount paid upon application. And whereas each of the scheduled applicants has requested the said X. Y. to execute this agreement on his or her behalf. Now it is hereby witnessed that in pursuance of the premises, and in consideration of each of the scheduled applicants having paid to the bankers of the company the amount payable on application, being one shilling per share upon the number of shares set opposite the names of the scheduled applicants in the third column of the said schedule, the company will allot and issue to such scheduled applicants respectively the number of shares set opposite their respective names in the said third column of the said schedule, having the respective distinguishing numbers which are set forth in the fourth column thereof credited with the sum of fifteen shillings per share paid up upon each share in addition to the sum of one shilling per share payable upon application. And it is hereby agreed and declared that the shares so to be allotted as aforesaid shall be deemed and taken to have been issued, and shall be held as shares upon which sixteen shillings per share have been paid, and shall be liable for further payment of four shillings per share and no more. And the company hereby undertake and agree that they will cause this agreement to be duly registered at the Joint Stock Companies Registration Office in pursuance of the Companies Act, 1867, before such shares or any of them are issued.

In witness whereof the said Company, Limited, have caused its common seal to be hereunto affixed, and the said X. Y. has hereunto set his hand and seal the day and year first before written.

THE SCHEDULE ABOVE REFERRED TO.

To of , the liquidator of the Company, Limited.
I hereby give you notice that I dissent from the special resolution for reconstruction of the above-named company, passed and confirmed at the general meetings held on the day of and the day of . And I further give you notice that I did not vote in favour of the said resolution at either of the said meetings. And I hereby require

E.W.

2 Q

No. 239.

No. 240.

Notice of dissent.

No. 240.

you either to abstain from carrying such resolution into effect, or to purchase the interest held by me at a price to be determined in accordance with the provisions of section 162 of the Companies Act, 1862.

(Signed) A. B.
(Address.)

Dated this day of 189 .

No. 241.

Agreement to
amalgamate with
an existing com-
pany.

An agreement made the day of between J. of on behalf of the Company, Limited (hereinafter called the "A Company"), of the one part and the Company, Limited (hereinafter called the "B Company"), of the other part. [*Recite formation of the A Company and particulars as to the shares, &c.; the like as to the B Company.*] And whereas it is intended that the A Company shall be wound up voluntarily, and that the liquidators thereof shall be authorized to adopt and carry out this agreement. Now these presents witness, and it is hereby agreed as follows:—

1. The A Company shall transfer and the B Company shall take over all the undertaking, &c. [*adopt form 237*].

2. In consideration of such transfer, the B Company shall—

(1.) Pay, satisfy, and discharge all the debts, liabilities, and engagements of the A Company due and owing at the time of the adoption of this agreement, and indemnify the A Company, its liquidators and contributories therefrom, and against all actions, proceedings, costs, claims, and demands in respect thereof.

(2.) Pay the costs and expenses of and incident to winding up the A Company, and of carrying the said transfer into effect, and indemnify the A Company, its liquidators and contributories therefrom.

(3.) Allot to every member of the A Company or his nominee or nominees at the request of such member one £ share in the B Company, with the sum of £ credited as paid up in respect of every £ share held by him in the A Company.

3. In the event of the liquidators, &c. [*see clause 5 of form 235*].

4. [*Insert clause 6 of form 235.*]

5. The said transfer shall take effect as from the date hereof. Until completion the A Company shall hold the said property agreed to be transferred, and shall carry on its business in trust for the B Company.

6. The A Company by its liquidators shall, &c. [*see clause 7 of form 237*].

7. [*Insert clause 8 of form 237.*]

8. This agreement is conditional on the adoption hereof by the liquidators of the A Company on or before the day of next, with the sanction of a special resolution of that company, and if this agreement shall not be so adopted, either of the parties hereto may, by giving notice in writing to the other, rescind the same.

9. As soon as this agreement shall have been adopted in manner aforesaid, the said J. shall be discharged from all liability in respect thereof.

10. [These presents are intended to operate as an agreement only, and not as a conveyance, transfer, or assignment.]

ARRANGEMENTS.

1. The creditors of the company shall accept and receive the sum of twelve shillings and six pence in the pound in discharge of their respective debts, such sum of twelve shillings and six pence in the pound to be paid to them by ten half-yearly instalments of one shilling and three pence in the pound.

2. Notwithstanding clause 1 hereof, every creditor of the company whose debt does not exceed one hundred pounds shall be entitled to claim and receive within three months of the sanction of this scheme by the Supreme Court the sum of nine shillings in the pound upon the amount of his debt in discharge of the indebtedness of the company to him.

3. Any creditor whose debt does not exceed one hundred pounds who shall not within one month from the sanction of the Court being given to this scheme elect by notice in writing delivered to the company either at Melbourne, Brisbane, or London, to accept the composition mentioned in clause 2, shall be deemed to have elected to receive in lieu thereof the payments mentioned in clause 1.

4. Payment of the first instalment under clause 1 shall be made at the expiration of six months from the sanction of the Court being given to this scheme.

5. All further proceedings for the winding-up of the company shall be stayed, and the property, effects, and assets of the company and the control of the business of the company shall be restored to the present directors.

6. No dividends shall be paid to shareholders until all instalments payable under this scheme have been paid.

7. The company may at any time, on three months' notice, pay off, *pari passu*, without any preference or priority, the instalments payable under this scheme before the same become due.

8. Nothing in this scheme shall be deemed to prejudice any existing security, lien, or charge upon the assets of the company or any part thereof, and the creditors of the company shall retain all their rights and remedies against any person or corporate body other than the company.

9. If and when the company shall have paid all its creditors the amounts coming to them under this scheme, and it shall at any time thereafter, after making due provision for or having paid its then existing creditors, have any moneys available, therefor it shall be entitled to apply such moneys or any part thereof to pay, *pari passu*, without any preference or priority to its present creditors, and to each of them from time to time, such sum or sums as with the moneys paid to them and each of them under the provisions of this scheme shall amount to the sum of twenty shillings in the pound on their respective debts.

10. The Supreme Court may alter, modify, or add to this scheme as it may think fit and proper.

11. The costs, charges, and expenses of the petitioner since the date of the winding-up order, preliminary to and of and incident to the said scheme, and of the proceedings to approve and confirm the same, and the like fees, costs, charges, and expenses of the Official Receiver be paid out of the assets of the said company in the hands of the Official Receiver.

No. 242.

Scheme of arrangement. For another form, see paragraph 18 of form 250.

No. 243.

Clause as to misfeasance proceedings generally required by Vaughan Williams, J. (see *ante*, p. 450).

No. 244.

Summons for leave to call meetings under the Joint Stock Co. Arrangement Acts.

The liquidators shall be at liberty, if they shall so think fit, to initiate, and they shall, if so required by the Court, initiate and prosecute proceedings under s. 10 of the Companies (Winding-up) Act, 1890, and all the costs of the liquidators incidental to or incurred by them, or which they shall be ordered to pay in connection with such proceedings, shall be paid by the new company.

In the High Court of Justice.

(Companies Winding-up.)

Mr. Justice Vaughan Williams.

In the Matter of the Companies Act, 1862 to 1890,

and

In the Matter of the Joint Stock Companies Arrangement Act, 1870,

and

In the Matters of the Company, Limited.

[*Formal Parts.*]

That the applicant may be directed to convene separate meetings of the [*state what, e.g.*, (1) of the debenture-holders, (2) of the unsecured creditors, and (3) of the members of the above-named company] for the purpose of [*state purpose, e.g.*, considering and, if thought fit, approving a scheme of arrangement to be made between such debenture-holders and creditors and the company], and that the applicant may be directed to convene the same in manner following [*state how*], or in such other manner as the Court may direct, and that a chairman of the said meetings may be appointed, and may be directed to report the result thereof to the Court.

No. 245.

[*Title as in form 244.*]

Order for meeting of unsecured creditors.

Order that the applicant be at liberty, pursuant to the above Acts, to convene a meeting of the unsecured creditors of the above-named company, to be held at on the day of , for the purpose of considering and, if thought fit, approving, with or without modification, a scheme of arrangement proposed to be made between the said company and its unsecured creditors, which scheme of arrangement is the exhibit to the said affidavit of .

And it is ordered that an advertisement convening such meeting, and stating that a copy of the said scheme of arrangement can be seen at the offices of the applicant and his solicitors, be inserted in the *London Gazette*, in the *Times* newspaper, and the not later than the day of , and that in addition a notice convening the said meeting, and enclosing a copy of the scheme of arrangement, together with a proper stamped form of proxy, be sent by prepaid letter post not later than the day of to each of the unsecured creditors whose names and addresses are known to the applicant.

And it is ordered that the chairman at the said meeting be [the said , the liquidator of the said company].

And it is ordered that the chairman do report the result of the said meeting to the Court.

[Title as in No. 244.]

No. 246.

Notice is hereby given, that pursuant to the directions of Mr. Justice Vaughan Williams, a meeting of the unsecured creditors of the above-named company will be held on the day of 189, at o'clock in the noon, at in the county of , for the purpose of considering, and, if thought fit, approving, with or without modification, a scheme of arrangement proposed to be made between the said company and its unsecured creditors, at which time and place all the unsecured creditors of the said company are requested to attend. The said judge has appointed Mr. of , the liquidator of the said company, to act as chairman of the meeting.

Notice of
meeting to
creditors.

A copy of the said scheme of arrangement is enclosed herewith, together with a form of proxy.

[Title as in No. 244.]

No. 247.

I, the undersigned, an unsecured creditor of the above-named company, hereby appoint (a) of , whom failing, of , whom failing, of , as my proxy to act for me at the meeting of unsecured creditors, to be held at on the day of 189, at o'clock in the noon, for the purpose of considering, and, if thought fit, approving, with or without modification, a scheme of arrangement proposed to be made between the said company and its unsecured creditors, and at such meeting and any adjournment thereof to vote for me and in my name (b) the said scheme, either with or without such modification, as my proxy may approve.

Form of
proxy.

Dated this day of 189.

(Signature)

(Address)

Amount of debt in figures £ : :

NOTES.

1. The Proxy must be lodged with the liquidator at his office at , in the county of , not later than the day before the meeting at which it is to be used.

2. Any alteration made in the form of proxy should be initialed.

[Title as in No. 244.]

No. 248.

Notice is hereby given that his Lordship, Mr. Justice Vaughan Williams, has directed a meeting of the unsecured creditors of the above-named company to be summoned, pursuant to the above statutes, for the purpose of considering, and, if thought fit, approving, with or without modification, a scheme of arrangement proposed to be made between the said company and its unsecured creditors. And that such meeting will be held on the day of 189, at o'clock in the noon, at in the county of , at which time and place the creditors of

Advertise-
ment of
meeting.

(a) If any other proxy is preferred, strike out names here inserted and add name of proxy preferred, and initial the alteration. The proxy must be an unsecured creditor of the company.

(b) If for, insert "for." If against, insert "against," and strike out the words after scheme, and initial such alterations.

No. 248. the above-named company are requested to attend. The said judge has appointed Mr. of , the liquidator of the said company, to act as chairman of such meeting. A copy of the said scheme of arrangement may be seen at the office of the said liquidator, situate at , or at the offices of his solicitors, Messrs. , No. , Street, in the City of London.

No. 249.

Report of
chairman
of meet-
ing.

[Title as in No. 244.]

I, of , in the county of , the person appointed by Mr. Registrar Hood to act as chairman of a meeting of the unsecured creditors of the above-named company, summoned by a notice dated the day of 189 , and duly advertised in pursuance of the order of this Honourable Court, dated the day of 189 , and held on the day of 189 , at , in the county of , do hereby report to this Honourable Court the result of this meeting as follows:—

1. The said meeting was attended by unsecured creditors in person, and by unsecured creditors by proxy. The total amount of the debts of the creditors present in person and by proxy amount to £ .

2. The scheme of arrangement referred to in the said order, dated the day of 189 , was read to the said meeting, and the following resolution was thereafter put by me to such meeting, that is to say: “Resolved that the scheme of arrangement between the Company, Limited, and its unsecured creditors as now submitted by the chairman of this meeting , be, and the same is hereby approved and agreed to, and that it is desirable that the said scheme be carried into effect, with power nevertheless to the present or other liquidator of the Company, Limited, to assent on behalf of all the unsecured creditors of the said company to any alteration of or modifications in the said scheme which the Court to which application is made to sanction the scheme may think fit to approve or impose.”

3. The persons named in the first schedule hereto, in number, voted in favour of the said resolution; the persons named in the second schedule hereto, in number, voted against the said resolution. The voting was at first taken on a shew of hands. On a poll being taken, the result was that it was ascertained that the said creditors were creditors to the extent of £ , and the said creditors were creditors to the extent of £ . Creditors to the value of £ were present, but did not vote.

THE FIRST SCHEDULE.

Name of Creditor.	Amount of Debt.
	£ s. d.

THE SECOND SCHEDULE.

[Title as in form 244.]

No. 250.

To Her Majesty's High Court of Justice.

The humble petition of [the company and its liquidator.]

Petition
for the
Court's
sanction to
arrange-
ment.

Sheweth as follows:—

1. Your petitioner, the above-named company [hereinafter called "the company"], was on the day of 18 , incorporated under the Companies Act, 1862 to 1886, as a company, limited by shares, with a nominal capital of £ divided into preference and ordinary shares of £ each.

2. The registered office of the company is situate at No. .

3. The company was by its memorandum of association empowered to, &c. [*state chief objects of the company*], and to undertake the other businesses and objects set forth in the said memorandum of association. By the same memorandum of association the company was also empowered to borrow and raise money for the purposes of its undertaking, &c. [*state clause in memorandum*].

4. In the terms of the said agreement referred to in the company's memorandum of association, which was dated the of 18 , and made between, &c. (and which was duly adopted by the company after registration, and duly registered at Somerset House pursuant to section 25 of the Companies Act, 1867), the company acquired the said lands, buildings, and premises known as, &c. The consideration paid by the company for the said premises was £ , which was satisfied as to £ part thereof, &c.

5. Of the authorized capital beyond the said ordinary shares issued as aforesaid, in pursuance of the said agreement preference shares and no more have been issued. These, like the said ordinary shares in issue, are all fully paid, but they were paid for in cash by those who subscribed for them.

6. The company in the year 18 issued a first mortgage debenture to secure the sum of £ and interest, and that debenture is still outstanding.

7. At the same time, namely, in the year 18 , the company issued a second debenture to secure a principal sum of £ , and that debenture is also still outstanding.

8. Both the said first and second debentures are charged upon the whole undertaking and property, whatsoever and wheresoever of the company, including its uncalled capital. The charge created by the said first debenture is a first charge upon the company's undertaking and property, and the charge created by the said second debenture is subject only to the principal moneys and interest secured by the first. The company is possessed of no assets which are not included in the charge in favour of the respective holders of the said first and second debentures.

9. The amount received by the company in respect of its preference shares issued as aforesaid was £ . The whole of the said sum was applied by the company in discharge of the cash consideration payable under the said contract of sale. The moneys received in respect of its said debentures, amounting to £ , have been expended in the execution of repairs and improvements in the company's hotel, and in replenishing and refurnishing the same.

10. Up till the month of in the present year the operations of the company had been sufficiently successful to admit of the payment of dividends upon the said preference shares, and in the year 18 and 18 the profits of the company were sufficient to admit of the payment of dividends on the company's ordinary shares as well, the active management of the company's hotel being in the hands of the managing director

No. 250.

, who had held that office since the company's formation, and who until the discoveries now to be mentioned had enjoyed the complete confidence both of the board and the shareholders of the company.

11. During the audit of the company's books in , however, the auditors of the company were unable to obtain from proper vouchers for his receipts and of the expenditure made by him on the company's behalf. The auditors informed the directors of this, and they at once directed the auditors to make a thorough investigation into the managing director's accounts, and thereupon, rather than face the consequences of such an investigation, the said managing director fled the country and has not since been heard of.

12. The investigation, however, proceeded, and in the result it was discovered that the amount of the said managing director's defalcations concealed by him up to that time by forgery and other systematic falsifications amounted to many thousands of pounds, and that in consequence of such defalcations the company, although possessed of a valuable property and undertaking, was in a highly critical financial condition, from which nothing but the infusion of fresh capital could extricate it, it being found that beyond its debenture debt above alluded to large sums were due to its landlords for arrears of rent, and £ or thereabouts were due to unsecured creditors.

13. The immediate result of these disclosures was that the landlords levied a distress for rent upon the company's premises; the holders of the first debenture threatened to appoint a receiver, as they were, upon such distress being levied, entitled to do of the undertaking, with a view to the realization of their security, and two winding-up petitions against the company were presented.

14. Under these circumstances the directors of the company, realizing that prompt measures must be taken if the company's undertaking was to be preserved for its shareholders, approached the landlords, debenture-holders, and principal unsecured creditors with a view of seeing whether some arrangement could not be made for tiding over the company's difficulties and preserving its business intact.

15. In response to these overtures the company's landlords, the said debenture-holders, and the great bulk of the unsecured creditors, recognizing the unfortunate position in which, owing to the defalcations aforesaid, the company found itself, expressed themselves willing to stand by for a time in order to enable the directors of the company to endeavour to raise some further capital, by means of which a reasonable arrangement might be made with the creditors, and the undertaking be preserved for the shareholders.

16. The directors, accordingly, having obtained assurances that the necessary further capital would be forthcoming, and could be obtained on the security of a further issue of second debentures of the company, prepared and submitted to the landlords, the respective holders of the said first and second debentures of the company, and the unsecured creditors of the company the scheme of arrangement hereafter mentioned, and finding that it was received with favour on all hands, they determined to take the necessary steps for the purpose of having it formally approved, so that it might in due course be brought before the court for its sanction.

17. With this view extraordinary general meetings of the company were duly convened, and held on the and days of 18 , and at these meetings a special resolution for the voluntary winding up of the company was duly passed and confirmed, and your petitioner, the said , was duly appointed liquidator for the purpose of the said winding-up. Furthermore, the said scheme of arrangement was submitted to the shareholders present at the second of the said meetings, and with one

dissentient was approved, and your said petitioner as liquidator was directed to take all necessary steps for the purpose of carrying the scheme into effect, and obtaining in due course the sanction of the court thereto.

18. Such scheme of arrangement is in the following terms:—

1. Save as hereinafter provided, every unsecured creditor of the above-named company (hereinafter called "the company") shall accept, in full satisfaction of the debt which he shall establish to be owing to him by the company, (a.) a cash composition of in the pound upon the amount of his said debt, such cash composition to be payable within . . . days after this scheme is sanctioned as hereinafter provided, or after his debt is established, whichever event shall last happen; (b.) the right to have issued to him upon the expiration of . . . days after the business of the company shall have been resumed in manner hereinafter mentioned, and after his debt shall have been established, as aforesaid in respect of each complete sum of £1 of his said debt remaining undischarged, by payment of the said cash composition a fully paid-up preference share of the company of the nominal value of £1.

2. Nevertheless—

(1.) All creditors of the company who by virtue of the preferential payments in Bankruptcy Act, 1888, or otherwise are entitled to be paid in full in priority to other creditors, shall be paid in full in cash out of the assets of the company within the same period of . . . days aforesaid.

(2.) Within the like period an agreement between the landlords of the company's hotel of the one part and the company of the other part shall be entered into whereby it will be provided that—

(a.) The rent of the said premises for the quarter ending the of . . . 18 . . . shall be paid in full by the company, a reasonable time for payment being given by the landlords.

(b.) All arrears of the said rent payable by the company on the . . . 18 . . . , and amounting at that date to £ . . . , shall be paid by the company and accepted by the landlords, as to £ . . . part thereof in cash, and as to £ . . . , the residue thereof in second mortgage debentures of the company of the issue hereinafter mentioned of the nominal value of £

(c.) On the said agreement being entered into, the landlords will withdraw the distress they have levied upon the company's premises in respect of the said arrears.

(3.) All the costs, charges, and expenses of and incidental to the winding-up of the company, including any costs of and incident to the pending winding-up petitions which the Court may order the company to pay, and including the costs, charges, and expenses of and incidental to the negotiations for the reconstruction of the company, and the preparation and carrying through of this scheme, and the obtaining of the sanction of the Court thereto, shall be paid in full out of the assets of the company.

3. Upon the payments mentioned in clause 1 and clause 2, sub-clauses (1) and (3) hereof being made, and upon the agreement mentioned in clause 2, sub-clause (2) being entered into, all further proceedings in relation to the winding-up of the company shall

No. 250.

- be stayed, and the property and assets of the company in the hands of the liquidator shall be handed over to the directors of the company, namely _____, to the intent that they may resume and continue the company's business.
4. Notwithstanding the pendency, however, of liquidation, the following proceedings shall be taken and acts done :—
 - (1.) General meetings of the company shall be called for the purpose of sanctioning by special resolution the subdivision of each existing preference share in the company of £ _____ into _____ preference shares of £ _____.
 - (2.) The said directors of the Company shall forthwith issue at par to persons willing to subscribe the moneys necessary for the purpose of making the payments mentioned in clause 1 and clause 2, sub-clauses (1) and (3) hereof, and also the cash payments mentioned in the agreement mentioned in clause 2, sub-clause (2), second debentures of the company to an amount not exceeding £ _____, such debentures to be in the same form as and to rank *pari passu* in all respects with the second debentures of the company now outstanding. The proceeds of the said second debentures so to be issued as aforesaid shall as received forthwith be handed over to the liquidator for the purpose of enabling him to make therewith the payments aforesaid.
 5. The said _____, who is the holder of all the second debentures of the company now outstanding, shall assent to the further issues of such second debenture required for the purposes of the agreement mentioned in clause 2, sub-clause (2) and of the last preceding clause of this scheme, and shall on demand deliver up the said second debentures now outstanding to the directors for the purpose of having endorsed thereon a memorandum to that effect.
 6. Forthwith upon the business of the company being resumed and continued as aforesaid, the said _____ shall surrender to the company fully paid ordinary shares in the company of the nominal value of £ _____, and fully paid preference shares in the company of the nominal value of £ _____.
 7. Except to the extent referred to in clause 5 hereof, nothing in this scheme contained shall be deemed to prejudice any existing security, lien, or charge upon the assets of the company or any part thereof.
 8. This scheme is subject to the sanction of the Court thereto being obtained in accordance with the above Acts.
 9. The liquidator may assent to any modification in this scheme which the Court may think fit to approve or impose.
 19. The said scheme had been previously approved by the holders of the said debentures and the landlords of the company, and also as hereinbefore appears by the shareholders, and on the _____ day of _____ 18____, the said scheme was duly submitted by your said petitioner to the judge in chambers, and by an order made on that day in the above matters. It was ordered that your said petitioner should be at liberty to convene a meeting of the unsecured creditors of the company, to be held at _____ on the _____ day of _____ 18____, for the purpose of considering and, if thought fit, approving of the said scheme of arrangement. And it was ordered that an advertisement convening the said meeting, and stating that a copy of the said scheme could be seen at the offices of your petitioner and his solicitors, should be inserted in the *London Gazette*, the *Times* newspaper, and _____ not later than the _____ of _____ 18____. And

No. 250.

that in addition a notice convening the said meeting, and enclosing a copy of the said scheme, together with a proper stamped form of proxy, should be sent by prepaid letter post, not later than the said of , to each of the unsecured creditors of the company whose names and addresses were known to your said petitioner, and your said petitioner was directed to preside at the said meeting and report the result thereof to the Court.

20. Your said petitioner accordingly convened the said meeting in accordance with the said order, and the said meeting so convened was held on the said of last at the aforesaid . The said meeting was attended personally by twenty creditors of the company, to whom £ or thereabouts is due, and was attended by proxy by forty-eight creditors of the company, to whom £ or thereabouts is due. Your said petitioner presided at the said meeting, and explained the said scheme to those present, and a resolution approving of the said scheme, and directing your said petitioner to carry the same into effect, having been duly proposed, was unanimously carried, all of the creditors present, whether in person or by proxy, recording their votes in favour of the said resolution.

21. The total unsecured indebtedness of the company is about £ , and so far as your said petitioner is aware, there is now no opposition to the said scheme on the part of any creditor. Your said petitioner has acted as manager of the company's hotel since , and is fully acquainted, both in that capacity and also by means of the information he has acquired as liquidator of the company, with the whole position and prospects of the company, and your said petitioner has satisfied himself that except by the subscription of fresh capital to be found under the scheme, there would be little or nothing for the company's unsecured creditors, inasmuch as the assets of the company would, if now realized, be quite insufficient to provide more than a small dividend for these creditors after satisfaction of the prior claims upon such assets. On the other hand, the company is possessed of a valuable undertaking, the prospects of which for the future are extremely good, and under the scheme the company's creditors will, in respect of such portions of their debts as are not to be paid in cash, be entitled to participate as preference shareholders in any success which may hereafter attend the company's operations. The advantages of the scheme to the company's shareholders are, in your said petitioner's belief, obvious, and he respectfully submits that in the interests of all parties the scheme is one which may properly be sanctioned by the Court.

Your petitioners therefore humbly pray as follows:—

1. That the said scheme of arrangement may be sanctioned by this Honourable Court so as to be binding on the debenture-holders, landlords, creditors, and contributories of the company, and on your petitioner as the liquidator thereof.
2. Or that such other order may be made in the premises as to this Honourable Court shall seem meet.

And your petitioners will ever pray, &c.

NOTE.—It is not intended to serve this petition on any person.

[Title as above.]

No. 251.

This Court doth hereby sanction the scheme of arrangement set forth in paragraph of the said petition and in the schedule hereto, and doth declare the same to be binding on [debenture-holders, &c.], and on the unsecured creditors and contributories of the said company, and also on the liquidator thereof.

Order
sanction-
ing
scheme.

No. 251.

And it is ordered that all the costs, charges, and expenses of and incidental to the winding-up of the said company, including the costs, charges, and expenses of and incidental to the negotiation for the reconstruction of the company, and the preparation and carrying through of the said scheme and of this order, be taxed.

REDUCTION OF CAPITAL.

I. NO DIMINUTION OF LIABILITY OR RETURN OF CAPITAL.

No.

No. 252.

In the High Court of Justice,
Chancery Division.

Petition
for
cancelling
lost
capital.

Mr. Justice Vaughan Williams.

In the Matter of the Company, Limited, and Reduced,
and

In the Matter of the Companies Act, 1867,
and

In the Matter of the Companies Act, 1887.

To Her Majesty's High Court of Justice.

The humble petition of the Company, Limited, and Reduced.
Sheweth as follows :—

1. Your petitioner, the above-named company (hereinafter called the company), was on the of 18 , incorporated under the Companies Acts, 1862 to 1890, as a company limited by shares.

2. The registered office of the company is situate at .

3. The objects for which the company was established were to acquire and take over as a going concern, on the terms of an agreement referred to in the company's memorandum and articles of association, the undertaking of [*state shortly the objects*].

4. Shortly after the incorporation of the company it commenced, and has since carried on business.

5. The nominal capital of the company as fixed by the memorandum of association is £100,000, divided into 10,000 shares of £10 each, and by that memorandum power is taken to divide the shares in the capital for the time being, original and increased, into different classes of shares, with any preferential, deferred, or special rights and privileges, *inter se*, which might be assigned thereto by or in accordance with the company's regulations for the time being.

6. Pursuant to the power so reserved to it, the company, by special resolution duly passed and confirmed in accordance with section 51 of the Companies Act, 1862, at extraordinary general meetings of the company, held respectively on the and days of 189 , resolved that 2000 of the said 10,000 shares of the company which were then unissued should be created into and issued as preference shares, and that such preference shares should confer upon their holders the right, amongst other things, to a fixed cumulative preferential dividend, at the rate of six per cent. per annum, on the amount for the time being paid up on such shares, and the right, in the event of the company being wound up, to have the surplus assets of the company applied in the first place in repaying to such preference shareholders the amount paid upon the preference shares held by them respectively, and dividend thereon, if any due, the residue only of such surplus assets to belong to and be divided among the other

shareholders of the company. The said resolution further conferred upon any and every holder of the said preference shares the right, on the terms therein mentioned, to have his shares, or any of them, converted into ordinary shares of the company, with all rights incidental thereto.

7. By virtue of the said special resolution, the company's nominal capital of £100,000 became and now is divided into 2000 preference shares, and 8000 ordinary shares of £10 each. All of the said preference shares have been issued and are fully paid up. Of the said ordinary shares there are in issue 7107 and no more, and of these 7107 shares 5669 are fully paid up, and on the remaining 1438 the sum of £6 per share and no more has been paid.

8. The said preference shares in issue as aforesaid have none of them been converted into ordinary shares under the power in their holders in that behalf hereinbefore referred to.

9. By clause of the articles of association of the company it is provided that the company may from time to time reduce its capital in any manner permitted by law.

10. By a special resolution of the company, duly passed and confirmed in accordance with section 51 of the Companies Act, 1862, at general meetings of the company duly held on the day of and the day of 189 respectively, it was resolved:—

“That the capital of the company be reduced from £100,000, divided into 10,000 shares of £10 each, to £60,911 10s., divided into 7107 shares of £4 10s. each, and 2893 shares of £10 each (of which 2893 shares 2000 have been issued as preference shares, and the remaining 893 are ordinary shares and unissued), and that such reduction be effected by cancelling capital which has been lost or is unrepresented by available assets to the extent of £5 10s. per share upon each of the 7107 ordinary shares which have been issued and are now outstanding, and by reducing the nominal amount of the said issued and outstanding shares from £10 to £4 10s. per share.”

11. Previously to the passing of the said special resolution, paid-up capital of the company to the extent of £ and upwards had been lost.

12. The reduction of capital aforesaid does not involve either the diminution of any liability in respect of unpaid capital or the payment to any shareholder of any paid-up capital [*or as the fact is*].

13. The form of minute proposed to be registered is as follows:—

“The capital of the Co., Ltd., henceforth is £60911 10s., divided into 2000 preference shares of £10 each, 893 ordinary shares of £10 each, and 7107 ordinary shares of £4 10s. each, instead of the original capital of £100,000, divided into 2000 preference shares and 8000 ordinary shares of £10 each. At the time of the registration of this minute all of the said preference shares and 5669 of the said ordinary shares of £4 10s. each have been issued, and are to be deemed fully paid. The remaining 1438 of the said ordinary shares of £4 10s. each have also been issued, but on each of these shares the sum of 10s. and no more has been and is to be deemed paid up. At the time of the registration of this minute the said 893 ordinary shares of £10 each are unissued, and nothing is to be deemed to be paid up thereon.”

Your petitioner the company therefore humbly prays—

1. That the said reduction of capital to be effected by the special resolution set forth in paragraph 10 hereof may be confirmed, and that the above-mentioned minute may be approved by the Court.

No. 252.

2. That the addition of the words "and reduced" to the company's name may be dispensed with altogether.

3. Or that such further or other order may be made in the premises as to the Court shall seem meet.

And your petitioner will ever pray, &c.

NOTE.—It is not intended to serve this petition upon any person.

No. 253.

[Title as in No. 252.]

Advertise-
ment of
petition.

Notice is hereby given that a petition presented to the High Court of Justice, Chancery Division, on the day of for confirming a resolution reducing the capital of the above-named company from £ to £ , is directed to be heard before his Lordship Mr. Justice Vaughan Williams, on the day of . And any creditor or shareholder of the company desiring to oppose the making of an order for the reduction of the capital of the said company under the above Acts should appear at the time of hearing by himself, or his counsel for that purpose. And a copy of the petition will be furnished to any creditor or shareholder of the company requiring the same by the undersigned solicitors, on payment of the regulated charges for the same.

Dated this day of .

Registrar.

Solicitors for the petitioners the above-named company.

No. 254.

[Title as in No. 252.]

Affidavit
in support
of peti-
tion (No.
252, ante,
p. 604).

I, , of , make oath and say as follows:—

1. I have, since the incorporation of the above-named company (hereinafter called the company), been a director [*or secretary*]. I am accordingly intimately acquainted with the affairs of the company, and am thus in a position to depose to the statements contained in this affidavit.

2. I have read the petition in the above matters now produced, &c., and I believe that all the statements contained in that petition are true, and that belief is grounded on the knowledge I have obtained as such director [*or secretary*] of the company as aforesaid.

3. The document now produced, &c., is the certificate of incorporation of the company. The registered office of the company is now situate at .

4. The document now produced, &c., is a printed copy of the memorandum and articles of association of the company, and also contains copies of all special resolutions which have been passed and confirmed since the incorporation of the company, except the special resolutions referred to in paragraphs 6 and 10 of the said petition.

5. The document now produced, &c., is a copy of the agreement mentioned in paragraph 3 of the said petition, pursuant to which and in consideration of the transfer to the company of the property, assets, and undertaking therein mentioned, 5662 of the 5669 ordinary shares of the company now in issue, which are fully paid up, were so issued and allotted. The original of the said agreement was duly filed with the Registrar of Joint Stock Companies before any of the shares therein mentioned were allotted. With the exception of the paid-up capital

represented by these shares, all the capital credited as paid up on the outstanding shares of the company, including the remaining seven of the said 5669 shares, has been paid up in cash.

6. The statements contained in paragraph 4 of the petition are correct.

7. The print now produced, &c., is a print of the special resolution referred to in paragraph 6 of the petition, and the proceedings had at the general meetings of the company, at which the said resolution was respectively passed and confirmed, are duly recorded in the minute-book of the company hereinafter referred to and exhibited to this affidavit. The statements contained in paragraphs 7 and 8 of the petition are correct, and these statements are further confirmed by the register of members of the company which is now produced, &c.

8. The general meetings mentioned in clause 10 of the petition were respectively convened by notices in the terms of the three documents now produced, &c. [*exhibit copies of the notices*]. These notices were duly sent out to the shareholders in accordance with the articles of association of the company. I was present at the meetings at which the resolution referred to in such paragraph was respectively passed and confirmed as a special resolution, and I say that the same was duly passed and confirmed in accordance with section 51 of the Companies Act, 1862.

9. The book now exhibited to me, &c., is the minute-book of the company, containing minutes of the proceedings had at general meetings of the company.

10. At the time when the said special resolution was passed, paid-up capital of the company to the extent of at least £ had been lost or was unrepresented by available assets. The fact of this loss having been sustained, and the causes to which it is attributable appear and are correctly summarized in the report of the Board, and the accounts of the company up to the 30th of September, 1894, annexed to the exhibit [*notice convening meeting*], and I would refer to that report and these accounts as correctly setting forth the position of the company.

11. From the said accounts it appears, and it is the fact, that even after placing the value of £ upon the company's goodwill—an item which, although one for which, having regard to the company's valuable connection and old-established business I believe the company to be fully entitled to take credit, had not previously appeared in its accounts as an asset—there is shown to be a sum of no less than £ of the paid-up capital of the company which is lost or is unrepresented by available assets.

12. [*State how the loss has arisen and the reasons for believing it to be permanent.*]

13. The financial position of the company was fully placed before the shareholders at their said meetings in and last, when the said resolution was sanctioned.

Sworn, &c.

[*For form of order sanctioning the cancellation, and of advertisement of the order, see forms 258 and 259.*]

No. 255. In the High Court of Justice,
Chancery Division.
Petition. Mr. Justice Vaughan Williams.
In the Matter of the Company, Limited, and Reduced,
and
In the Matter of the Companies Act, 1867.
To Her Majesty's High Court of Justice,
The humble petition of the Company, Limited, and
Reduced.

1. [See para. 1, form No. 252.]
2. [See para. 2, form No. 252.]
3. [See para. 3, form No. 252.]
4. [See para. 4, form No. 252.]

The capital of the company is £ , divided into shares of £ each, with power to increase such capital and to give such preference, &c. [*set out paragraph of memorandum of association*].

7. The articles of association of the company, as originally framed, conferred no power on the company to reduce its capital. By special resolution of the company, duly passed and confirmed in accordance with section 51 of the Companies Act, 1862, at general meetings of the company duly held on the _____ of 189 , and the _____ of 189 , respectively, it was resolved as follows [*here state verbatim the resolution as to alteration of articles.*]

That the capital of the company be reduced from £ , divided into [*founders'*] shares of £ each, numbered to inclusive; ordinary shares of £ each, numbered to inclusive; and ordinary shares of £ each, numbered to inclusive; and preference shares of £ each, numbered to inclusive; to £ , divided into founders' shares of £ each, numbered to inclusive; ordinary shares of £ each, numbered to inclusive; and preference shares of £ each, numbered to inclusive.

That such reduction be effected by returning to the holders of such of the founders' shares and ordinary shares, numbered from to and from to respectively, as shall have been issued and paid up in full capital to the extent of £ per share, and by reducing the nominal amount of the said shares and

No. 255.

of the other founders' and ordinary shares numbered to
and to respectively from £ to £, whether
the same shall have been issued and partly paid up, or shall not have
been issued.

9. The form of the minute proposed to be registered is as follows:—

Minute approved by the Court. The capital of the company is £
(divided into founders' shares of £ each, and numbered
to ; ordinary shares of £ each, and num-
bered to and to respectively, inclusive, and
preference shares of £ each, numbered to
inclusive), instead of the original capital of £, divided into
founders' shares of £ each, numbered to
inclusive; ordinary shares of £ each, numbered to
inclusive; preference shares of £ each, numbered
to inclusive; and ordinary shares of £ each, num-
bered to inclusive. At the time of the registration of
this minute of the said founders' shares, numbered
to, both inclusive, and of the said ordinary shares, num-
bered to, both inclusive, have been issued, on each of
which the sum of £ has been paid, and is to be deemed to be paid
up, except that calls amounting in the whole to £ are in arrear on
of the said ordinary shares, and £ is in arrear in respect
of of the said founders' shares, and except that on each of the
following shares £ (whereof £ will be returned) has
been paid up, that is to say founders' shares, numbered
to inclusive, and the ordinary shares, numbered to
inclusive. At the time of the registration of this minute the residue
of the said ordinary shares, viz., and the whole of the said
preference shares are unsecured, and nothing is to be deemed to be
paid thereon.

Your petitioner therefore humbly prays:—

1. That the said reduction of capital to be effected by the special resolution set forth in paragraph 8 hereof may be confirmed, and that the above-mentioned minute may be approved by the Court.
2. That for that purpose all necessary and proper directions may be given, and that a day may be fixed on and after which the addition of the words "and reduced" to the company's name may be dispensed with.
3. Or that such other order may be made as to this Honourable Court shall seem fit.

And your petitioners will ever pray, &c.

NOTE.—It is not intended to serve this petition on any person.

For form of advertisement, see form 253, *ante*. For form of affidavit, see form 254, which can be adapted.

[Title as in No. 255.]

No. 256.

Order that an inquiry be made what are the debts, claims, and liabilities affecting the company on the day of , and that notice of the presentation of the said petition be inserted in the *London Gazette* and the *Times* newspaper respectively on the day of , and in the *Standard* newspaper on the day of , and that a list of the persons who are creditors of the company on the said day of , and an office copy of the affidavit verifying the same, be left at the chambers of the Registrar in Companies Winding-up on or before the day of .

Order for
inquiry as
to credi-
tors.

No. 257.

[Title as in form 255.]

Regis-
trar's
certificate
as to
creditors.

I hereby certify that the result of the inquiry which has been made in pursuance of the order dated the day of , made on the application of the above-named company, the petitioners in this matter, is as follows:—

The applicants have attended by their solicitors.

The debts, claims, and liabilities of or affecting the said company on the day of are set forth in the first part of the schedule hereto, and amount altogether to the sum of £ .

In addition to the said debts, claims, and liabilities set forth in the said first part of the schedule hereto, the said company was on the said day of contingently liable on account of capital uncalled in respect of shares held by them in divers companies. A list of the companies in which the above-mentioned company had shares on the said day of , whereon there was liability in respect of *uncalled capital*, is set forth in the second part of the schedule hereto, and there is set opposite to the name of each such company respectively the amount of shares so held, the amount called up and paid, and the amount uncalled in respect of shares held by the above-named company.

All the creditors of the said company whose names are set forth in the first and second parts of the said schedule hereto have consented to the proposed reduction of capital mentioned in the petition in this matter, and referred to in the said order dated , as appears by the affidavit of , filed , and the exhibits therein referred to.

Pursuant to the said order of the day of , notice of the petition presented by the said company for confirming a resolution reducing their capital has been inserted in the *London Gazette* of the [state names of other papers and dates], and a list of the persons who were creditors of the said company on the day of , together with an office copy of the affidavit of , filed , verifying the same, was left at my chambers on the day of .

Notice of the said list of creditors has been inserted in the *London Gazette*, the *Times* [and add other papers], all dated the day of .

Dated this day of 189 .

THE SCHEDULE BEFORE REFERRED TO.

First Part.

Names, Addresses, and Descriptions of Creditors.	Nature of Debt or Claim.	Amount of Debt or Claim.
--	--------------------------	--------------------------

Second Part.

Name.	No. of Shares.	Nominal Amount of Share.	Called per Share.	Total Amount uncalled.
-------	----------------	--------------------------	-------------------	------------------------

No. 258.

Order
sanction-

Order that the [cancellation and] reduction of the capital of the above-named company resolved on and effected by the special resolution passed and confirmed at two general meetings of the petitioners the Company, Limited and Reduced, held respectively on the and the

18 , and which resolution was in the words and figures following, that is to say [*set out the resolutions verbatim*], be confirmed.

And order that this order be produced to the Registrar of Joint Stock Companies, and that an office copy thereof be delivered to him, together with a minute in the words or to the effect set forth in the schedule hereto.

And order that notice of the registration by the Registrar of Joint Stock Companies of this order and of the said minute be published as follows: that is to say, once each in the *London Gazette*, the *Times*, &c., within 10 days after such registration.

And order that the addition of the words "and Reduced" to the title of the above-named company be [altogether dispensed with] or [used for 14 days from the date of this order].

THE SCHEDULE ABOVE REFERRED TO.

Minute approved by the Court.

In the matter of the _____ Company, Limited [and Reduced], and in the matter of the Companies Act, 1867 [and in the matter of the Companies Act, 1877].

Notice is hereby given that an order of the Chancery Division of the High Court of Justice, dated _____, confirming the reduction of the capital of the above-named company from £ _____ to £ _____, and a minute approved by the Court shewing the particulars required by the above-mentioned Acts, have been registered by the Registrar of Joint Stock Companies, viz. on the _____ day of _____. The said minute is as follows: [*set out minute*].

Dated the _____ day of _____ 189 .

Solicitors for the Company.

No. 258.

ing cancellation and reduction of capital.

No. 259.

Advertisement of order sanctioning reduction of capital.

MEMORANDUM OF ASSOCIATION ACT, 1890.

In the High Court of Justice,
Chancery Division.

Mr. Justice _____.

In the Matter of the Companies (Memorandum of Association) Act, 1890,

and

In the Matter of the _____ Company, Limited.

To Her Majesty's High Court of Justice.

The humble petition of

Sheweth as follows:—

1. Your petitioner, the above-named company (hereinafter called "the company"), was incorporated in the year _____, under the Companies Acts, 1862 and 1867, as a company limited by shares, and under the name of _____.

2. The registered office of the company is situate at _____.

3. The objects for which the company was established are by its memorandum of association stated to be as follows:—

(1.) To receive money on deposit at interest, which interest may be represented by coupons.

(2.) To invest the money received from payment, on shares in the

No. 260.

Petition for alteration of memorandum of association.

No. 260.

stocks, or obligations of British, foreign, or colonial governments, states, provinces, or municipalities, or of railways or other public undertakings, guaranteed by any British, foreign, or colonial government, state, province, or municipality, provided that not more than one-tenth part of all the money invested shall be invested in the stocks or obligations of any one government, state, province, municipality, railway, or undertaking.

- (3.) To invest the money received on deposit in making advances on any of the foregoing securities or in purchasing in the same.
- (4.) To undertake the formation of and work trusts similar to the Foreign and Colonial Government Trust.
- (5.) To do all such other things as are incidental or conducive to the attainment of the above objects.

And the nominal capital of the company was by its memorandum of association stated to be £ , divided into shares of £ each.

4. By a special resolution of the company, duly passed and confirmed at extraordinary general meetings of the company, held respectively on the 18 and 18 , and with the approval of the Board of Trade, the company duly changed its name from to .

5. By clause of the articles of association it was provided that the business of the company should include the several objects mentioned in or within the scope and meaning of the memorandum of association, and all incidental matters; and by clause it was provided that any branch or kind of business which by the memorandum of association of the company or the new articles was either expressly or by implication authorized to be undertaken by the company might be undertaken by the directors as therein mentioned.

6. Immediately after the incorporation the company commenced, and has ever since carried on business, and before the 18 issued shares and no more, and on which shares the sum of £ per share has been paid up.

7. By a special resolution of the company, duly and unanimously passed and confirmed at extraordinary general meetings of the company held respectively on the 18 and the 18 , it was resolved:—

“That the memorandum of association of the company be altered by inserting immediately after clause () in paragraph of the present memorandum of association of the company, the following clause (), and immediately after clause () in the same paragraph the following clause (), and that the memorandum of association of the company shall be read and construed as if the following clauses () and () were part of the original memorandum of association of the company.

“() To borrow or raise money, or secure money already or hereafter from time to time borrowed, or raised by the issue of perpetual or terminable bonds, debentures, debenture stock, obligations, mortgages, and securities of all kinds redeemable or otherwise, and to frame, constitute, and secure the said bonds, debentures, debenture stock, obligations, mortgages, and securities in such manner and form as may seem expedient, with full power to charge and secure the same on the undertaking of the company, and on the whole or any part of its property, assets, estate, rights, and effects present and future (including any capital from time to time uncalled) by a trust deed or otherwise, or to secure the same by deposit of securities or other property, or otherwise howsoever.

"() In addition to the previous powers, to invest the moneys of the company on the security of, or otherwise to acquire and hold any bonds, debentures, debenture stock, obligations, mortgages, or securities of any companies or corporations formed or incorporated under British, foreign, or colonial law, and to sell, dispose of, and vary the same."

No. 260.

8. Under existing circumstances the additional powers of borrowing referred to in the last-mentioned special resolution will enable the company to carry on its business more economically and more efficiently, and to obtain its main purpose by new or improved means, and the business of exercising the other additional powers referred to in the same resolution may conveniently and advantageously be combined with the business of the company, and the extension of the company's objects proposed to be effected by the said last-mentioned resolution is required in order to enable the company to carry on the said business of exercising the said other additional powers.

9. The creditors of the company are the holders of per cent. debenture stock, to whom the company is indebted in aggregate amount of £ the holders of per cent. debenture stock to whom the company is indebted in the sum of £ , persons from whom the company has received money on deposit, and to whom the company is indebted in the sum of £ , and the directors, officers, and servants of the company.

10. No one will be prejudiced by the extension of the company's object, and it is just and equitable that the said last-mentioned special resolution for the extension thereof should be confirmed.

Your petitioner therefore humbly prays as follows:—

(1.) That the alteration of the Memorandum of Association resolved on and effected by the special resolution set forth in paragraph of this petition may be confirmed by the Court, pursuant to the Companies (Memorandum of Association) Act, 1890.

(2.) That with a view thereto all necessary accounts and inquiries may be taken and made.

(3.) Or that such other order may be made in the premises as to this Honourable Court may seem meet.

NOTE.—It is not intended to serve this petition on any person.

[Title as in form 260.]

No. 261.

It is ordered that the said petition be set down to be heard before his Lordship Mr. Justice on the day of 18 , when any creditor, shareholder, stockholder, debenture-holder, or depositor who desire to object may attend and be heard, and notice of the presentation of the said petition, and of the said day fixed for the hearing, be inserted on or before the day of 18 , the following times in the following newspapers; that is to say, once in the *London Gazette*, twice in the *Times*, *Standard*, and *Daily Telegraph*, and that notice be sent by post in a prepaid letter, addressed to every debenture-holder and depositor of the said company, seven clear days before the day fixed for hearing the said petition, such notice to be settled by the judge.

Order for
advertise-
ment of
petition.

Chief Clerk.

No. 262.

[Title as in form 260.]

**Advertise-
ment of
petition.**

Notice is hereby given, that a petition presented to the High Court of Justice, Chancery Division, on the day of 18 , for confirming a special resolution passed on the day of 18 , and confirmed on the day of 18 , "That, &c.," is directed to be heard before his Lordship Mr. Justice on the day of 18 .

Any creditor, shareholder, stockholder, debenture-holder, or depositor of the company desiring to oppose the making of an order altering the provisions of the memorandum of association of the said company under the above Act should appear at the time of hearing by himself or his counsel for that purpose. And a copy of the petition will be furnished to any creditor, shareholder, stockholder, debenture-holder, or depositor of the company requiring the same by the undersigned, on payment of the regulated charges for the same.

Dated this day of 18 .

Chief Clerk.

Solicitors for the Company.

No. 263.

[Title as in form 260.]

**Circular to
creditors.**

We beg to give you notice that a petition presented to Her Majesty's High Court of Justice, on the day of 18 , for confirming a resolution passed at a meeting of shareholders, on the day of 18 , and confirmed on the day of 18 , "That, &c.," is directed to be heard before his Lordship Mr. Justice on the day of 18 .

We also beg to inform you that this notice is sent to you by direction of his Lordship Mr. Justice , for the purpose of ascertaining whether you, as a debenture-holder or depositor, assent to, dissent from, or are neutral with respect to the proposed alteration.

As Mr. Justice desires to know whether you assent to, dissent from, or are neutral, we shall be obliged by your writing "assenting," "dissenting," or "neutral" in the form sent herewith, and returning the same to us on or before the day of 18 .

If you are desirous of opposing the making of an order for the alteration of the memorandum of association of the said company under the above Act, you must appear at the time of hearing by yourself or your counsel for that purpose, and a copy of the petition will be furnished to you, if you require the same, by us the undersigned, on payment of the regulated charge for the same.

Dated this day of 18 .

Yours, &c.,

Solicitors for the said company.

No. 264.

[Title as above.]

**Form to
accom-
pany
circular.**

Gentlemen,

I beg to acknowledge receipt of your notice, dated the day of 18 , of an application to confirm a resolution for altering the

provisions of the memorandum of association of the above-named company, and I request that you will return me to his Lordship Mr. Justice as (a) in reference to such alteration.

I am,

Yours, &c.

To Messrs.

Solicitors.

No. 264.

[Title as in form 260.]

This Court doth order that the alteration of the memorandum of association of the above-named company, resolved on and effected by the special resolution passed and confirmed at two general meetings of the petitioners, the Company, Limited, held respectively on the day of and the , and which resolution was in the words and figures set forth in the schedule hereto, be confirmed in conformity with the provisions of the Companies (Memorandum of Association) Act, 1890.

No. 265.

Order
sanction-
ing
alteration.

And it is ordered that an office copy of this order, together with a printed copy of the memorandum of association altered in accordance with the said resolution, be delivered to the Registrar of Joint Stock Companies within twenty-two days from the date of this order.

[And it is ordered that the above-named company do, within four calendar months from the date of this order, give to all the present debenture stockholders a first charge by way of floating security on all the assets and undertaking of the company.]

And it is ordered that the name of the above-named company be altered within three months from the date of this order to “.”

And it is ordered that the petitioners do pay to their costs of this petition and consequent thereon (such costs to be taxed by the taxing-master in case the parties differ).

THE SCHEDULE ABOVE REFERRED TO.

DEBENTURE-HOLDERS' ACTIONS.

No. 266.

In the High Court of Justice,

Chancery Division.

Mr. Justice (b)

Writ.

In the matter of the Company, Limited.

Plaintiff A. on behalf of himself and all other holders of mortgage debentures in the defendant company.

Defendants.—The company and subsequent debenture-holders (if any).

The plaintiff claims as a debenture-holder of the defendant company—

1. A declaration that the mortgage debentures issued by the defendant company, and now outstanding, form a charge upon all the property of the company comprised therein.
2. All necessary accounts and inquiries.
3. Payment.
4. Foreclosure or sale.
5. A receiver and manager.

(a) Here insert the word “assenting,” “dissenting,” or “neutral,” as the case may be.

(b) Where the company is in process of being wound, the action will be attached to Vaughan Williams, J.

No. 267.

Writ
(where
trust-
deed).

[Title as in No. 266.]

Plaintiff A. on behalf of himself and all other the holders of debentures in the defendant company entitled to the benefit of the indenture mentioned in the indorsement of the writ in this action.

Defendants.—The company and the trustees of the indenture.

The plaintiff claims as a debenture-holder of the defendant company—

1. To have an account taken of what is due from the defendant company to the plaintiff, and the other holders of debentures entitled to the benefit of an indenture, dated, &c., and made, &c.
2. To have the trusts of the said indenture carried into execution under the direction of the Court.
3. A receiver and manager.

The defendants are sued as trustees of the said indenture.

No. 268.

Charge to
secure
advances
to re-
ceiver.

Received from of the sum of £100, part of a sum of £1000 authorized to be raised by an order of the H. C. of J. dated, &c., and made in an action of A v. B Co., Ltd., under which order every part of the said sum of £1000 is to rank, *pari passu*, as a first charge upon the assets of the said company (comprised in or charged by a certain trust-deed dated, &c.) in priority to the holders of all debentures (and their trustees), and is to bear interest commencing, as to the said sum (the receipt whereof is hereby acknowledged), from the date hereof at the rate of £ per cent. per annum until repayment, and in addition to such interest each lender of part of the said sum of £1000 is entitled to receive on being paid off a bonus as follows [*state it*]. The said charge will be by way of floating security upon the said assets as aforesaid, and the undersigned does not undertake any personal liability to pay any part of the said sum of £1000, or any such interest or bonus as aforesaid.

Dated, &c.,

Receiver and Manager.

NOTE.—Where one person only advances, this form can be adapted to an agreement between the party advancing and the receiver. Sometimes the loan is made in the name of one person, who declares a trust of the security in favour of the persons contributing to the loan.

No. 269.

Statement
of claim.

[Title as in No. 266.]

Writ issued 189 .

1. The defendant company was incorporated in 18 , under the Companies Acts, 1862 to 1890, for the object amongst others of acquiring and carrying on the business of, &c.

2. The memorandum of association of the company gave power to borrow money [*state fully clause giving power to borrow on debentures*].

3. In the month of 18 the company borrowed and raised for the purposes of the company a sum of £10,000 by the issue of mortgage debentures for that amount.

4. The said debentures were all in the same form for £100 each, and by each debenture the company agreed to pay to the registered holder the principal thereby secured on the 18 , and in the meantime to pay interest thereon at the rate of £ per cent. per annum by equal half-yearly payments, and the company thereby charged with the payment of such principal and interest, its undertaking and all its

property, both present and future (including its uncalled capital for the time being), and each debenture was described as one of a series for securing the principal sum of £10,000, and was stated to be issued on the conditions endorsed thereon.

5. By the said conditions it was, *inter alia*, provided that the said debentures should rank, *pari passu*, in point of charge on the property therein mentioned, and that the charge by the debentures created should be a floating security.

6. By another of the said conditions it was provided that if the company should make default for six calendar months in the payment of any interest thereby secured, the registered holder of such debentures might at any time thereafter, before such interest was paid by notice in writing to the company, call in the principal moneys thereby secured, and that such principal moneys should immediately become payable (or the condition under the terms of which the principal has become payable).

7. The plaintiff is the registered holder of _____ of the said debentures, all dated the _____ day of _____, for securing principal sums amounting in the aggregate to £ _____.

8. The company made default in payment of the half-year's interest due to the plaintiff on his said debentures on the _____ day of _____, and the plaintiff on the _____ day of _____ duly served at the registered office of the company a notice calling in the principal money secured by his said debentures. The plaintiff afterwards demanded payment thereof, but no part has been paid [*or state the breach of the condition which makes the principal payable*].

9. The whole of the said principal moneys and interest from 18 _____ is still owing to the plaintiff.

The plaintiff claims—

- (1.) A declaration that the said debentures constitute a charge on all the undertaking and property of the company.
- (2.) An account of what is due to the plaintiff and the other holders of the said debentures for principal interest and costs.
- (3.) That the said debentures may be enforced by foreclosure or sale.
- (4.) A receiver and manager of the property and business of the company.

[If there is a trust-deed, add a paragraph giving short particulars of the deed, and add to the claim—

- (5.) That the trusts of the said indenture may be carried into execution under the direction of the Court.]

Declare that the plaintiff and the other holders of debentures in the defendant company, issued as in the statute of claim mentioned, are entitled to a charge on all the undertaking and property of the company for securing the repayment of the principal moneys and interest in the said debentures mentioned. Direct the following account and inquiries : (1) An account of what is due for principal and interest to the plaintiff, and the other holders of the said debentures respectively. (2) An inquiry of what the property comprised in and charged by the said debentures consists, and in whom the same is vested. Adjourn for consideration. Liberty to apply in chambers as to a sale, and generally.

No. 269.

No. 270.
Judgment.

No. 271.

Tax the costs of plaintiff as between solicitor and client, including his costs of and relating to the application for leave to commence this action. Deal with funds as in payment schedule.

**Order on
further
considera-
tion.**

The payment schedule will direct sale of fund in Court; out of the proceeds, payment of the costs, and division of the residue, *pro rata*, among the debenture-holders mentioned in the schedule to the chief clerk's certificate.

APPENDIX II.
STATUTES.

STATUTES AND ORDERS.

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(See other Orders in the body of this work.)

THE COMPANIES ACT, 1862.

25 & 26 VICT. c. 89.

Preliminary.

[1. Short Title.] [2. Commencement of Act.]

3. For the purposes of this Act a company that carries on the business of Insurance in common with any other business or businesses shall be deemed to be an insurance company.

Definition of insurance company.

4. No company, association, or partnership consisting of more than ten persons shall be formed, after the commencement of this Act, for the purpose of carrying on the business of banking, unless it is registered as a company under this Act, or is formed in pursuance of some other Act of Parliament, or of letters patent; and no company, association, or partnership consisting of more than twenty persons shall be formed, after the commencement of this Act, for the purpose of carrying on any other business that has for its object the acquisition of gain by the company, association, or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of some other Act of Parliament, or of letters patent, or is a company engaged in working mines within and subject to the jurisdiction of the Stannaries.

Prohibition of partnerships exceeding certain number.

[5. Division of Act.]

PART I.

CONSTITUTION AND INCORPORATION OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

Memorandum of Association.

Mode of
forming
company.

6. Any seven or more persons associated for any lawful purpose may, by subscribing their names to a memorandum of association, and otherwise complying with the requisitions of this Act in respect of registration, form an incorporated company, with or without limited liability.

Mode of
limiting
liability of
members.

7. The liability of the members of a company formed under this Act may, according to the memorandum of association, be limited either to the amount, if any, unpaid on the shares respectively held by them, or to such amount as the members may respectively undertake by the memorandum of association to contribute to the assets of the company in the event of its being wound up.

Memo-
randum of
association
of a company
limited by
shares.

8. Where a company is formed on the principle of having the liability of its members limited to the amount unpaid on their shares, hereinafter referred to as a company limited by shares, the memorandum of association shall contain the following things; (that is to say)—

- (1.) The name of the proposed company, with the addition of the word "Limited" as the last word in such name:
- (2.) The part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the company is proposed to be situate:
- (3.) The objects for which the proposed company is to be established:
- (4.) A declaration that the liability of the members is limited;
- (5.) The amount of capital with which the company proposes to be registered divided into shares of a certain fixed amount:

Subject to the following regulations:

- (1.) That no subscriber shall take less than one share:
- (2.) That each subscriber of the memorandum of association shall write opposite to his name the number of shares he takes.

[9. Memorandum of association of a company limited by guarantee.]

Memo-
randum of
association
of an
unlimited
company.

10. Where a company is formed on the principle of having no limit placed on the liability of its members, hereinafter referred to as an unlimited company, the memorandum of association shall contain the following things; (that is to say)—

- (1.) The name of the proposed company:
- (2.) The part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the company is proposed to be situate:
- (3.) The objects for which the proposed company is to be established.

Stamp,
signature,
and effect of
memo-
randum of
association.

11. The memorandum of association shall bear the same stamp as if it were a deed, and shall be signed by each subscriber in the presence of, and be attested by, one witness at the least, and that attestation shall be a sufficient attestation in Scotland as well as in England and Ireland: It shall, when registered, bind the company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were in the memorandum contained, on the part of himself, his heirs, executors, and administrators, a covenant to observe all the conditions of such memorandum, subject to the provisions of this Act.

Power of
certain com-
panies to
alter memo-
randum of
association.

12. Any company limited by shares may so far modify the conditions contained in its memorandum of association, if authorized to do so by its regulations as originally framed, or as altered by special resolution in manner hereinafter mentioned, as to increase its capital, by the issue of new shares of such amount as it thinks expedient, or to consolidate and divide its capital into shares of larger amount than its existing shares, or to convert its paid-up shares into stock, but, save as aforesaid, and save as is hereinafter provided in the case of a change of name, no alteration shall be made by any company in the conditions contained in its memorandum of association (a).

(a) See now Companies (Memorandum of Association) Act, 1890.

13. Any company under this Act, with the sanction of a special resolution of the company passed in manner hereinafter mentioned, and with the approval of the Board of Trade testified in writing under the hand of one of its secretaries or assistant secretaries, may change its name, and upon such change being made, the registrar shall enter the new name on the register in the place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case; but no such alteration of name shall affect any rights or obligations of the company, or render defective any legal proceedings instituted or to be instituted by or against the company, and any legal proceedings may be continued or commenced against the company by its new name that might have been continued or commenced against the company by its former name.

Power of companies to change name.

Articles of Association.

14. The memorandum of association may, in the case of a company limited by shares, and shall, in the case of a company limited by guarantee or unlimited, be accompanied, when registered, by articles of association signed by the subscribers to the memorandum of association, and prescribing such regulations for the company as the subscribers to the memorandum of association deem expedient: The articles shall be expressed in separate paragraphs, numbered arithmetically: They may adopt all or any of the provisions contained in the Table marked A in the first schedule hereto: They shall, in the case of a company, whether limited by guarantee or unlimited, that has a capital divided into shares, state the amount of capital with which the company proposes to be registered; and in the case of a company, whether limited by guarantee or unlimited, that has not a capital divided into shares, state the number of members with which the company proposes to be registered, for the purpose of enabling the registrar to determine the fees payable on registration: In a company limited by guarantee or unlimited, and having a capital divided into shares, each subscriber shall take one share at the least, and shall write opposite to his name in the memorandum of association the number of shares he takes.

Regulations to be prescribed by articles of association.

15. In the case of a company limited by shares, if the memorandum of association is not accompanied by articles of association, or in so far as the articles do not exclude or modify the regulations contained in the Table marked A in the first schedule hereto, the last-mentioned regulations shall, so far as the same are applicable, be deemed to be the regulations of the company in the same manner and to the same extent as if they had been inserted in articles of association, and the articles had been duly registered.

Application of Table A.

16. The articles of association shall be printed, they shall bear the same stamp as if they were contained in a deed, and shall be signed by each subscriber in the presence of, and be attested by, one witness at the least, and such attestation shall be a sufficient attestation in Scotland as well as in England and Ireland: When registered, they shall bind the company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were in such articles contained a covenant on the part of himself, his heirs, executors, and administrators, to conform to all the regulations contained in such articles, subject to the provisions of this Act; and all moneys payable by any member to the company, in pursuance of the conditions and regulations of the company, or any of such conditions or regulations, shall be deemed to be a debt due from such member to the company, and in England and Ireland to be in the nature of a specialty debt.

Stamp, signature, and effect of articles of association.

General Provisions.

17. The memorandum of association and the articles of association, if any, shall be delivered to the registrar of joint stock companies hereinafter mentioned, who shall retain and register the same: There shall be paid to the registrar by the company having a capital divided into shares, in respect of the several matters mentioned in the Table marked B in the first schedule hereto, the several fees therein specified, or such smaller fees as the Board of

Registration of memorandum of association and articles of association, with

fees as in
Table B.

Effect of
registration.

Prohibition
against
identity of
names in
companies.

Trade may from time to time direct, and by a company not having a capital divided into shares, in respect of the several matters mentioned in the Table marked C in the first schedule hereto, the several fees therein specified, or such smaller fees as the Board of Trade may from time to time direct: All fees paid to the said registrar in pursuance of this Act shall be paid into the receipt of Her Majesty's Exchequer, and be carried to the account of the Consolidated Fund of the United Kingdom of Great Britain and Ireland.

18. Upon the registration of the memorandum of association, and of the articles of association in cases where articles of association are required by this Act or by the desire of the parties to be registered, the registrar shall certify under his hand that the company is incorporated, and in the case of a limited company that the company is limited: The subscribers of the memorandum of association, together with such other persons as may from time to time become members of the company, shall thereupon be a body corporate by the name contained in the memorandum of association, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, with power to hold lands, but with such liability on the part of the members to contribute to the assets of the company in the event of the same being wound up as is hereinafter mentioned: A certificate of the incorporation of any company given by the registrar shall be conclusive evidence that all the requisitions of this Act in respect of registration have been complied with.

[19. Copies of memorandum and articles to be given to members.]

20. No company shall be registered under a name identical with that by which a subsisting company is already registered, or so nearly resembling the same as to be calculated to deceive, except in a case where such subsisting company is in the course of being dissolved and testifies its consent in such manner as the registrar requires; and if any company, through inadvertence or otherwise, is, without such consent as aforesaid, registered by a name identical with that by which a subsisting company is registered, or so nearly resembling the same as to be calculated to deceive, such first-mentioned company may, with the sanction of the registrar, change its name, and upon such change being made the registrar shall enter the new name on the register in the place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case; but no such alteration of name shall affect any rights or obligations of the company, or render defective any legal proceedings instituted or to be instituted by or against the company, and any legal proceedings may be continued or commenced against the company by its new name that might have been continued or commenced against the company by its former name.

[21. Prohibition against certain companies holding land.]

PART II.

DISTRIBUTION OF CAPITAL AND LIABILITY OF MEMBERS OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

Distribution of Capital.

Nature of
interest in
company.

22. The shares or other interest of any member in a company under this Act shall be personal estate, capable of being transferred in manner provided by the regulations of the company, and shall not be of the nature of real estate, and each share shall, in the case of a company having a capital divided into shares, be distinguished by its appropriate number.

Definition of
"Member."

23. The subscribers of the memorandum of association of any company under this Act shall be deemed to have agreed to become members of the company whose memorandum they have subscribed, and upon the registration of the company shall be entered as members on the register of members hereinafter mentioned; and every other person who has agreed to become a

member of a company under this Act, and whose name is entered on the register of members, shall be deemed to be a member of the company.

24. Any transfer of the share or other interest of a deceased member of a company under this Act, made by his personal representative, shall, notwithstanding such personal representative may not himself be a member, be of the same validity as if he had been a member at the time of the execution of the instrument of transfer.

Transfer by
personal re-
presentative.

25. Every company under this Act shall cause to be kept in one or more books a register of its members, and there shall be entered therein the following particulars:

Register of
members.

(1.) The names and addresses, and the occupations, if any, of the members of the company, with the addition, in the case of a company having a capital divided into shares, of a statement of the shares held by each member, distinguishing each share by its number: and of the amount paid or agreed to be considered as paid on the shares of each member:

(2.) The date at which the name of any person was entered in the register as a member:

(3.) The date at which any person ceased to be a member:

And any company acting in contravention of this section shall incur a penalty not exceeding five pounds for every day during which its default in complying with the provisions of this section continues, and every director or manager of the company who shall knowingly and wilfully authorize or permit such contravention shall incur the like penalty.

26. Every company under this Act, and having a capital divided into shares, shall make, once at least in every year, a list of all persons who, on the fourteenth day succeeding the day on which the ordinary general meeting, or if there is more than one ordinary meeting in each year, the first of such ordinary general meetings is held, are members of the company; and such list shall state the names, addresses, and occupations of all the members therein mentioned, and the number of shares held by each of them, and shall contain a summary specifying the following particulars:

Annual list
of members.

(1.) The amount of the capital of the company, and the number of shares into which it is divided:

(2.) The number of shares taken from the commencement of the company up to the date of the summary:

(3.) The amount of calls made on each share:

(4.) The total amount of calls received:

(5.) The total amount of calls unpaid:

(6.) The total amount of shares forfeited:

(7.) The names, addresses, and occupations of the persons who have ceased to be members since the last list was made, and the number of shares held by each of them.

The above list and summary shall be contained in a separate part of the register, and shall be completed within seven days after such fourteenth day as is mentioned in this section, and a copy shall forthwith be forwarded to the registrar of joint stock companies.

[27. Penalty on company, &c., not keeping a proper register.]

28. Every company under this Act, having a capital divided into shares, that has consolidated and divided its capital into shares of larger amount than its existing shares, or converted any portion of its capital into stock, shall give notice to the registrar of joint stock companies of such consolidation, division, or conversion, specifying the shares so consolidated, divided, or converted.

Company to
give notice
of consolida-
tion or of
conversion
of capital
into stock.

29. Where any company under this Act, and having a capital divided into shares, has converted any portion of its capital into stock, and given notice of such conversion to the registrar, all the provisions of this Act which are applicable to shares only shall cease as to so much of the capital as is converted into stock; and the register of members hereby required to be kept by the company, and the list of members to be forwarded to the registrar, shall shew the amount of stock held by each member in the list instead of the amount of shares, and the particulars relating to shares hereinbefore required.

Effect of
conversion
of shares
into stock.

Entry of
trusts on
register.

Certificate
of shares
or stock.

Inspection
of register.

Power to
close
register.

Notice of
increase of
capital and
of members
to be given
to registrar.

Remedy for
improper
entry or
omission of
entry in
register.

30. No notice of any trust expressed, implied, or constructive, shall be entered on the register or be receivable by the registrar, in the case of companies under this Act and registered in England or Ireland.

31. A certificate, under the common seal of the company, specifying any share or shares or stock held by any member of a company, shall be *prima facie* evidence of the title of the member to the share or shares or stock therein specified.

32. The register of members, commencing from the date of the registration of the company, shall be kept at the registered office of the company hereinafter mentioned: Except when closed as hereinafter mentioned, it shall, during business hours, but subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day be appointed for inspection, be open to the inspection of any member gratis, and to the inspection of any other person on the payment of one shilling, or such less sum as the company may prescribe, for each inspection; and every such member or other person may require a copy of such register, or of any part thereof, or of such list or summary of members as is hereinafter mentioned, on payment of sixpence for every hundred words required to be copied: If such inspection or copy is refused, the company shall incur for each refusal a penalty not exceeding two pounds, and a further penalty not exceeding two pounds for every day during which such refusal continues, and every director and manager of the company who shall knowingly authorize or permit such refusal shall incur the like penalty; and in addition to the above penalty, as respects companies registered in *England and Ireland*, any judge sitting in chambers, or the vice-warden of the Stannaries, in the case of companies subject to his jurisdiction, may by order compel an immediate inspection of the register.

33. Any company under this Act may, upon giving notice by advertisement in some newspaper circulating in the district in which the registered office of the company is situated, close the register of members for any time or times not exceeding in the whole thirty days in each year.

34. Where a company has a capital divided into shares, whether such shares may or may not have been converted into stock, notice of any increase in such capital beyond the registered capital, and where a company has not a capital divided into shares, notice of any increase in the number of members beyond the registered number, shall be given to the registrar in the case of an increase of capital, within fifteen days from the date of the passing of the resolution by which such increase has been authorized, and in the case of an increase of members within fifteen days from the time at which such increase of members has been resolved on or has taken place, and the registrar shall forthwith record the amount of such increase of capital or members: If such notice is not given within the period aforesaid the company in default shall incur a penalty not exceeding five pounds for every day during which such neglect to give notice continues, and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty.

35. If the name of any person is, without sufficient cause, entered in or omitted from the register of members of any company under this Act, or if default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member of the company, the person or member aggrieved, or any member of the company, or the company itself, may, as respects companies registered in England or Ireland, by motion in any of Her Majesty's Superior Courts of Law or Equity, or by application to a judge sitting in chambers, or to the vice-warden of the Stannaries, in the case of companies subject to his jurisdiction, and as respects companies registered in Scotland by summary petition to the Court of Session, or in such other manner as the said Courts may direct, apply for an order of the Court that the register may be rectified; and the Court may either refuse such application, with or without costs, to be paid by the applicant, or it may, if satisfied of the justice of the case, make an order for the rectification of the register, and may direct the company to pay all the costs of such motion, application, or petition, and any damages the party aggrieved may have

sustained: The Court may in any proceeding under this section decide on any question relating to the title of any person who is a party to such proceeding to have his name entered in or omitted from the register, whether such question arises between two or more members or alleged members, or between any members or alleged members and the company, and generally the Court may in any such proceeding decide any question that it may be necessary or expedient to decide for the rectification of the register; provided that the Court, *if a Court of Common Law*, may direct an issue to be tried, in which any question of law may be raised, and a writ of error or appeal, in the manner directed by "*The Common Law Procedure Act, 1854*," shall lie.

[The words in italics were repealed by the Statute Law Revision Act, 1881.]

36. Whenever any order has been made rectifying the register, in the case of a company hereby required to send a list of its members to the registrar, the Court shall, by its order, direct that due notice of such rectification be given to the registrar.

Notice to registrar of rectification of register.

37. The register of members shall be *prima facie* evidence of any matters by this Act directed or authorized to be inserted therein.

Register to be evidence.

Liability of Members.

38. In the event of a company formed under this Act being wound up, every present and past member of such company shall be liable to contribute to the assets of the company to an amount sufficient for payment of the debts and liabilities of the company, and the costs, charges, and expenses of the winding-up, and for the payment of such sums as may be required for the adjustment of the rights of the contributories amongst themselves, with the qualifications following; (that is to say)—

Liability of present and past members of company.

- (1.) No past member shall be liable to contribute to the assets of the company if he has ceased to be a member for a period of one year or upwards prior to the commencement of the winding-up;
- (2.) No past member shall be liable to contribute in respect of any debt or liability of the company contracted after the time at which he ceased to be a member;
- (3.) No past member shall be liable to contribute to the assets of the company unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act;
- (4.) In the case of a company limited by shares, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member;
- (5.) In the case of a company limited by guarantee, no contribution shall be required from any member exceeding the amount of the undertaking entered into on his behalf by the memorandum of association;
- (6.) Nothing in this Act contained shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members upon any such policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of such policy or contract;
- (7.) No sum due to any member of a company, in his character of a member, by way of dividends, profits, or otherwise, shall be deemed to be a debt of the company, payable to such member in a case of competition between himself and any other creditor not being a member of the company; but any such sum may be taken into account, for the purposes of the final adjustment of the rights of the contributories amongst themselves (a).

(a) See s. 5 of the Act of 1867.

PART III.

MANAGEMENT AND ADMINISTRATION OF COMPANIES AND ASSOCIATIONS
UNDER THIS ACT.*Provisions for the Protection of Creditors.*

Registered
office of
company.

39. Every company under this Act shall have a registered office to which all communications and notices may be addressed. If any company under this Act carries on business without having such an office, it shall incur a penalty not exceeding five pounds for every day during which business is so carried on.

Notice of
situation of
registered
office.

40. Notice of the situation of such registered office, and of any change therein, shall be given to the registrar, and recorded by him: until such notice is given the company shall not be deemed to have complied with the provisions of this Act with respect to having a registered office.

Publication
of name by
a limited
company.

41. Every limited company under this Act, whether limited by shares or by guarantee, shall paint or affix, and shall keep painted or affixed, its name on the outside of every office or place in which the business of the company is carried on, in a conspicuous position, in letters easily legible, and shall have its name engraved in legible characters on its seal, and shall have its name mentioned in legible characters in all notices, advertisements, and other official publications of such company, and in all bills of exchange, promissory notes, endorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of such company, and in all bills of parcels, invoices, receipts, and letters of credit of the company.

[42. Penalties on non-publication of name.]

Register of
mortgages.

43. Every limited company under this Act shall keep a register of all mortgages and charges specially affecting property of the company, and shall enter in such register in respect of each mortgage or charge a short description of the property mortgaged or charged, the amount of charge created, and the names of the mortgagees or persons entitled to such charge: If any property of the company is mortgaged or charged without such entry as aforesaid being made, every director, manager, or other officer of the company who knowingly and wilfully authorizes or permits the omission of such entry shall incur a penalty not exceeding fifty pounds: The register of mortgages required by this section shall be open to inspection by any creditor or member of the company at all reasonable times; and if such inspection is refused, any officer of the company refusing the same, and every director and manager of the company authorizing or knowingly and wilfully permitting such refusal, shall incur a penalty not exceeding five pounds, and a further penalty not exceeding two pounds for every day during which such refusal continues; and in addition to the above penalty, as respects companies registered in England and Ireland, any judge sitting in chambers, or the vice-warden of the Stannaries in the case of companies subject to his jurisdiction, may by order compel an immediate inspection of the register.

Certain
companies
to publish
statement
entered in
schedule.

44. Every limited banking company and every insurance company, and deposit, provident, or benefit society under this Act shall, before it commences business, and also on the first Monday in February and the first Monday in August in every year during which it carries on business, make a statement in the form marked D, in the first schedule hereto, or as near thereto as circumstances will admit, and a copy of such statement shall be put up in a conspicuous place in the registered office of the company, and in every branch office or place where the business of the company is carried on, and if default is made in compliance with the provisions of this section the company shall be liable to a penalty not exceeding five pounds for every day during which such default continues, and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty.

Every member and every creditor of any company mentioned in this section shall be entitled to a copy of the above mentioned statement on payment of a sum not exceeding sixpence.

[45. List of directors to be sent to registrar where capital not divided into shares.]

[46. Penalty on company not keeping register of directors.]

47. A promissory note or bill of exchange shall be deemed to have been made, accepted, or endorsed on behalf of any company under this Act, if made, accepted, or endorsed in the name of the company by any person acting under the authority of the company, or if made, accepted, or endorsed by or on behalf or on account of the company by any person acting under the authority of the company.

Promissory notes and bills of exchange.

48. If any company under this Act carries on business when the number of its members is less than seven for a period of six months after the number has been so reduced, every person who is a member of such company during the time that it so carries on business after such period of six months, and is cognizant of the fact that it is so carrying on business with fewer than seven members, shall be severally liable for the payment of the whole debts of the company contracted during such time, and may be sued for the same, without the joinder in the action or suit of any other member.

Prohibition against carrying on business with less than seven members.

Provisions for Protection of Members.

49. A general meeting of every company under this Act shall be held once at the least in every year.

General meeting of company.

50. Subject to the provisions of this Act, and to the conditions contained in the memorandum of association, any company formed under this Act may, in general meeting from time to time, by passing a special resolution in manner hereinafter mentioned, alter all or any of the regulations of the company contained in the articles of association or in the Table marked A in the first schedule, where such table is applicable to the company, or make new regulations to the exclusion of or in addition to all or any of the regulations of the company; and any regulations so made by special resolution shall be deemed to be regulations of the company of the same validity as if they had been originally contained in the articles of association, and shall be subject in like manner to be altered or modified by any subsequent special resolution.

Power to alter regulations by special resolution.

51. A resolution passed by a company under this Act shall be deemed to be special whenever a resolution has been passed by a majority of not less than three-fourths of such members of the company for the time being entitled, according to the regulations of the company, to vote as may be present, in person or by proxy (in cases where by the regulations of the company proxies are allowed), at any general meeting of which notice specifying the intention to propose such resolution has been duly given, and such resolution has been confirmed by a majority of such members for the time being entitled, according to the regulations of the company, to vote as may be present, in person or by proxy, at a subsequent general meeting, of which notice has been duly given, and held at an interval of not less than fourteen days, nor more than one month from the date of the meeting at which such resolution was first passed: At any meeting mentioned in this section, unless a poll is demanded by at least five members, a declaration of the chairman that the resolution has been carried shall be deemed conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the same: Notice of any meeting shall, for the purposes of this section, be deemed to be duly given and the meeting to be duly held, whenever such notice is given and meeting held in manner prescribed by the regulations of the company: In computing the majority under this section, when a poll is demanded, reference shall be had to the number of votes to which each member is entitled by the regulations of the company.

Definition of special resolution.

52. In default of any regulations as to voting every member shall have one vote, and in default of any regulations as to summoning general meetings a meeting shall be held to be duly summoned of which seven days' notice in writing has been served on every member in manner in which notices are required to be served by the Table marked A in the first schedule hereto, and in default of any regulations as to the persons to summon meetings five members shall be competent to summon the same, and in default of any

Provision where no regulations as to meetings.

regulations as to who is to be chairman of such meeting, it shall be competent for any person elected by the members present to preside.

Registry
of special
resolutions.

53. A copy of any special resolution that is passed by any company under this Act shall be printed and forwarded to the registrar of joint stock companies, and be recorded by him: If such copy is not so forwarded within fifteen days from the date of the confirmation of the resolution, the company shall incur a penalty not exceeding two pounds for every day after the expiration of such fifteen days during which such copy is omitted to be forwarded, and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty.

Copies of
special re-
solutions.

54. Where articles of association have been registered, a copy of every special resolution for the time being in force shall be annexed to or embodied in every copy of the articles of association that may be issued after the passing of such resolution: Where no articles of association have been registered, a copy of any special resolution shall be forwarded in print to any member requesting the same on payment of one shilling, or such less sum as the company may direct: And if any company makes default in complying with the provisions of this section it shall incur a penalty not exceeding one pound for each copy in respect of which such default is made; and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty.

[55. Execution of deeds abroad.]

[56. Examination of affairs of company by inspectors.]

[57. Application for inspection to be supported by evidence.]

[58. Inspection of books.]

[59. Result of examination how dealt with.]

[60. Power of company to appoint inspectors.]

[61. Report of inspectors to be evidence.]

Notices.

Service of
notices on
company.

62. Any summons, notice, order, or other document required to be served upon the company may be served by leaving the same, or sending it through the post in a prepaid letter addressed to the company, at their registered office.

Rules as to
notices by
letter.

63. Any document to be served by post on the company shall be posted in such time as to admit of its being delivered in the due course of delivery within the period (if any) prescribed for the service thereof; and in proving service of such document it shall be sufficient to prove that such document was properly directed, and that it was put as a prepaid letter into the post office.

Authenti-
cation of
notices of
company.

64. Any summons, notice, order, or proceeding requiring authentication by the company may be signed by any director, secretary, or other authorized officer of the company, and need not be under the common seal of the company, and the same may be in writing or in print, or partly in writing and partly in print.

Legal Proceedings.

[65. Recovery of penalties.]

[66. Application of penalties.]

Evidence of
proceedings
at meetings.

67. Every company under this Act shall cause minutes of all resolutions and proceedings of general meetings of the company, and of the directors or managers of the company in cases where there are directors or managers, to be duly entered in books to be from time to time provided for the purpose; and any such minute as aforesaid, if purporting to be signed by the chairman of the meeting at which such resolutions were passed or proceedings had, or by the chairman of the next succeeding meeting, shall be received as evidence in all legal proceedings; and until the contrary is proved, every general meeting of the company or meeting of directors or managers in respect of the proceedings of which minutes have been so made shall be deemed to have been duly held and convened, and all resolutions passed thereat or proceedings had, to have been duly passed and had, and all appointments of

directors, managers, or liquidators shall be deemed to be valid, and all acts done by such directors, managers, or liquidators, shall be valid, notwithstanding any defect that may afterwards be discovered in their appointments of qualifications.

68. In the case of companies under this Act, and engaged in working mines within and subject to the jurisdiction of the Stannaries, the Court of the vice-warden of the Stannaries shall have and exercise the like jurisdiction and powers, as well on the common law as on the equity side thereof, which it now possesses by custom, usage, or statute in the case of unincorporated companies, but only so far as such jurisdiction or powers are consistent with the provisions of this Act and with the constitution of companies, as prescribed or required by this Act; and for the purpose of giving fuller effect to such jurisdiction in all actions, suits, or legal proceedings instituted in the said Court, in causes or matter whereof the Court has cognizance, all process issuing out of the same and all orders, rules, demands, notices, warrants, and summonses required or authorized by the practice of the Court to be served on any company whether registered or not registered, or any member or contributory thereof, or any officer, agent, director, manager, or servant thereof, may be served in any part of England without any special order of the vice-warden for that purpose, or by such special order may be served in any part of the United Kingdom of Great Britain and Ireland, or in the adjacent islands, parcel of the Dominions of the Crown, on such terms and conditions as the Court shall think fit; and all decrees, orders, and judgments of the said Court made or pronounced in such causes or matters may be enforced in the same manner in which decrees, orders, and judgments of the Court may now by law be enforced, whether within or beyond the local limits of the Stannaries; and the seal of the said Court, and the signature of the registrar thereof, shall be judicially noticed by all other Courts and judges in England and shall require no other proof than the production thereof: The registrar of the said Court, or the assistant-registrar, in making sales under any decree or order of the Court, shall be entitled to the same privilege of selling by auction or competition without a license, and without being liable to duty, as a judge of the Court of Chancery is entitled to in pursuance of the Acts in that behalf.

Jurisdiction of vice-warden of Stannaries.

69. Where a limited company is plaintiff or pursuer in any action, suit, or other legal proceeding, any judge having jurisdiction in the matter may, if it appears by any credible testimony that there is reason to believe that if the defendant be successful in his defence the assets of the company will be insufficient to pay his costs, require sufficient security to be given for such costs, and may stay all proceedings until such security is given.

Provision as to costs in actions brought by certain limited companies.

70. In any action or suit brought by the company against any member to recover any call or other monies due from such member in his character of member, it shall not be necessary to set forth the special matter, but it shall be sufficient to allege that the defendant is a member of the company, and is indebted to the company in respect of a call made or other monies due whereby an action or suit hath accrued to the company.

Declaration in action against members.

Alteration of Forms.

[71. Board of Trade may alter forms in schedule.]

Arbitrations.

72. Any company under this Act may from time to time, by writing under its common seal, agree to refer and may refer to arbitration, in accordance with "The Railway Companies Arbitration Act, 1859," any existing or future difference, question, or other matter whatsoever in dispute between itself and any other company or person, and the companies parties to the arbitration may delegate to the person or persons to whom the reference is made power to settle any terms or to determine any matter capable of being lawfully settled or determined by the companies themselves, or by the directors or other managing body of such companies.

Power for companies to refer matters to arbitration.

Provisions of
22 & 23 Vict.
c. 49, to
apply

73. All the provisions of "The Railway Companies Arbitration Act, 1850," shall be deemed to apply to arbitrations between companies and persons in pursuance of this Act; and in the construction of such provisions "the companies" shall be deemed to include companies authorized by this Act to refer disputes to arbitration.

PART IV.

WINDING-UP OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

Preliminary.

Meaning of
contributory.

74. The term "contributory" shall mean every person liable to contribute to the assets of a company under this Act, in the event of the same being wound up: It shall also, in all proceedings for determining the persons who are to be deemed contributories, and in all proceedings prior to the final determination of such persons, include any person alleged to be a contributory.

Nature of
liability of
contributory.

75. The liability of any person to contribute to the assets of a company under this Act, in the event of the same being wound up, shall be deemed to create a debt (in England and Ireland of the nature of a specialty) accruing due from such person at the time when his liability commenced, but payable at the time or respective times when calls are made as hereinafter mentioned for enforcing such liability; and it shall be lawful in the case of the bankruptcy of any contributory to prove against his estate the estimated value of his liability to future calls as well as calls already made.

Contribu-
tories in case
of death.

76. If any contributory dies either before or after he has been placed on the list of contributories hereinafter mentioned, his personal representatives, heirs, and devisees shall be liable in a due course of administration to contribute to the assets of the company in discharge of the liability of such deceased contributory, and such personal representatives, heirs, and devisees shall be deemed to be contributories accordingly.

Contribu-
tories in case
of bank-
ruptcy.

77. If any contributory becomes bankrupt, either before or after he has been placed on the list of contributories, his assignees shall be deemed to represent such bankrupt for all the purposes of the winding-up, and shall be deemed to be contributories accordingly, and may be called upon to admit to proof against the estate of such bankrupt, or otherwise to allow to be paid out of his assets in due course of law, any monies due from such bankrupt in respect of his liability to contribute to the assets of the company being wound up; and for the purposes of this section any person who may have taken the benefit of any Act for the relief of insolvent debtors before the eleventh day of October one thousand eight hundred and sixty-one shall be deemed to have become bankrupt.

Contribu-
tories in case
of marriage.

78. If any female contributory marries, either before or after she has been placed on the list of contributories, her husband shall during the continuance of the marriage be liable to contribute to the assets of the company the same sum as she would have been liable to contribute if she had not married, and he shall be deemed to be a contributory accordingly (a).

Winding-up by Court.

Circum-
stances under
which com-
pany may be
wound up by
Court.

79. A company under this Act may be wound up by the Court as hereinafter defined, under the following circumstances: (that is to say)—

- (1.) Whenever the company has passed a special resolution requiring the company to be wound up by the Court:
- (2.) Whenever the company does not commence its business within a year from its incorporation, or suspends its business for the space of a whole year:
- (3.) Whenever the members are reduced in number to less than seven:

(a) See 45 & 46 Vict. c. 75, ss. 6, 7, 8, and 9.

(4.) Whenever the company is unable to pay its debts :

(5.) Whenever the Court is of opinion that it is just and equitable that the company should be wound up.

80. A company under this Act shall be deemed to be unable to pay its debts :—

Company
when deemed
unable to pay
its debts.

(1.) Whenever a creditor by assignment or otherwise, to whom the company is indebted at law or in equity, in a sum exceeding fifty pounds then due, has served on the company, by leaving the same at their registered office, a demand under his hand requiring the company to pay the sum so due, and the company has for the space of three weeks succeeding the service of such demand neglected to pay such sum, or to secure or compound for the same to the reasonable satisfaction of the creditor :

(2.) Whenever, in England and Ireland, execution or other process issued on a judgment, decree, or order obtained in any Court in favour of any creditor, at law or in equity in any proceedings instituted by such creditor against the company, is returned unsatisfied in whole or in part :

(3.) Whenever, in Scotland, the induciæ of a charge for payment on an extra decree, or an extract registered bond, or an extract registered protest have expired without payment being made :

(4.) Whenever it is proved to the satisfaction of the Court that the company is unable to pay its debts.

81. [This section is now repealed by 53 & 54 Vict. c. 63, s. 33.]

82. Any application to the Court for the winding-up of a company under this Act shall be by petition ; it may be presented by the company, or by any one or more creditor or creditors, contributory or contributories of the company, or by all or any of the above parties, together or separately ; and every order which may be made on any such petition shall operate in favour of all the creditors and all the contributories of the company in the same manner as if it had been made upon the joint petition of a creditor and a contributory.

Application
for winding-
up to be
made by
petition.

83. Any judge of the High Court of Chancery may do in chambers any act which the Court is hereby authorized to do ; and the vice-warden of the Stannaries may direct that a petition for winding-up a company be heard by him at such time and at such place within the jurisdiction of the Stannaries, or within or near to the place where the registered office of the company is situated, as he may deem to be convenient to the parties concerned, or (with the consent of the parties concerned) at any place in England ; and all orders made thereupon shall have the same force and effect as if they had been made by the vice-warden sitting at Truro or elsewhere within the jurisdiction of the Court, and all parties and persons summoned to attend at the hearing of any such petition shall be compellable to give their attendance before the vice-warden by like process and in like manner as at the hearing of any cause or matter at the usual sitting of the said Court ; and the registrar of the Court may, subject to exception or appeal to the vice-warden, as heretofore used, do and exercise such and the like acts and powers in the matter of winding-up as he is now used to do and exercise in a suit on the equity side of the said Court (a).

Power of
Court.

84. A winding-up of a company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding-up.

85. The Court may, at any time after the presentation of a petition for winding-up a company under this Act, and before making an order for winding-up the company, upon the application of the company, or of any creditor or contributory of the company, restrain further proceedings in any action, suit, or proceeding against the company, upon such terms as the Court thinks fit ; the Court may also at any time after the presentation of such petition, and before the first appointment of liquidators, appoint provisionally an official liquidator of the estate and effects of the company.

Commence-
ment of
winding-up
by Court.
Court may
grant in-
junction.

(a) This section is amended, so far of the Stannaries Act, 1869.
as relates to the vice-warden, by s. 38

Course to be pursued by Court on hearing petition.

Actions and suits to be stayed after order for winding-up.

Copy of order to be forwarded to registrar.

Power of Court to stay proceedings.

Effect of order on share capital of company limited by guarantee.

Court may have regard to wishes of creditors or contributories.

Appointment of official liquidator.

Resignations, removals, filling up vacancies, and compensation.

Style and duties of official liquidator.

86. Upon hearing the petition the Court may dismiss the same with or without costs, may adjourn the hearing conditionally or unconditionally, and may make any interim order, or any other order that it deems just.

87. When an order has been made for winding-up a company under this Act, no suit, action, or other proceeding shall be proceeded with or commenced against the company except with the leave of the Court, and subject to such terms as the Court may impose.

88. When an order has been made for winding-up a company under this Act, a copy of such order shall forthwith be forwarded by the company to the registrar of joint stock companies, who shall make a minute thereof in his books relating to the company.

89. The Court may at any time after an order has been made for winding-up a company, upon the application by motion of any creditor or contributory of the company, and upon proof to the satisfaction of the Court that all proceedings in relation to such winding-up ought to be stayed, make an order staying the same, either altogether or for a limited time, on such terms and subject to such conditions as it deems fit.

90. When an order has been made for winding-up a company limited by guarantee and having a capital divided into shares, any share capital that may not have been called up shall be deemed to be assets of the company, and to be a debt (in England and Ireland of the nature of a specialty) due to the company from each member to the extent of any sums that may be unpaid on any shares held by him, and payable at such time as may be appointed by the Court.

91. The Court may, as to all matters relating to the winding-up, have regard to the wishes of the creditors or contributories, as proved to it by any sufficient evidence, and may, if it thinks it expedient, direct meetings of the creditors or contributories to be summoned, held, and conducted in such manner as the Court directs, for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the Court: in the case of creditors, regard is to be had to the value of the debts due to each creditor, and in the case of contributories to the number of votes conferred on each contributory by the regulations of the company.

Official Liquidators.

92. For the purpose of conducting the proceedings in winding-up a company, and assisting the Court therein, there may be appointed a person or persons to be called an official liquidator or official liquidators; and the Court having jurisdiction may appoint such person or persons, either provisionally or otherwise, as it thinks fit, to the office of official liquidator or official liquidators; in all cases if more persons than one are appointed to the office of official liquidator, the Court shall declare whether any act hereby required or authorized to be done by the official liquidator is to be done by all or any one or more of such persons. *The Court may also determine whether any and what security is to be given by any official liquidator on his appointment; if no official liquidator is appointed, or during any vacancy in such appointment, all the property of the company shall be deemed to be in the custody of the Court.*

[The words in italics are now repealed by 53 & 54 Vict. c. 63, s. 33; but see the words in the second schedule to that Act, wrongly cited.]

93. Any official liquidator may resign or be removed by the Court on due cause shown: And any vacancy in the office of an official liquidator appointed by the Court shall be filled by the Court: There shall be paid to the official liquidator such salary or remuneration, by way of percentage or otherwise, as the Court may direct; and if more liquidators than one are appointed, such remuneration shall be distributed amongst them in such proportions as the Court directs.

94. The official liquidator or liquidators shall be described by the style of the official liquidator or official liquidators of the particular company in respect of which he is or they are appointed, and not by his or their individual name or names; he or they shall take into his or their custody, or under his or their control, all the property, effects, and things in action to which the

company is or appears to be entitled, and shall perform such duties in reference to the winding-up of the company as may be imposed by the Court.

95. The official liquidator shall have power, with the sanction of the Court, to do the following things :

Powers of
official
liquidator.

To bring or defend any action, suit, or prosecution, or other legal proceeding, civil or criminal, in the name and on behalf of the company :

To carry on the business of the company, so far as may be necessary for the beneficial winding-up of the same :

To sell the real and personal and heritable and movable property, effects, and things in action of the company by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels :

To do all acts and to execute, in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose to use, when necessary, the company's seal :

To prove, rank, claim, and draw a dividend, in the matter of the bankruptcy or insolvency or sequestration of any contributory, for any balance against the estate of such contributory, and to take and receive dividends in respect of such balance, in the matter of bankruptcy or insolvency or sequestration, as a separate debt due from such bankrupt or insolvent, and rateably with the other separate creditors :

To draw, accept, make, and endorse any bill of exchange or promissory note in the name and on behalf of the company, also to raise upon the security of the assets of the company from time to time any requisite sum or sums of money; and the drawing, accepting, making, or endorsing of every such bill of exchange or promissory note as aforesaid on behalf of the company shall have the same effect with respect to the liability of such company as if such bill or note had been drawn, accepted, made, or endorsed by or on behalf of such company in the course of carrying on the business thereof :

To take out, if necessary, in his official name, letters of administration to any deceased contributory, and to do in his official name any other act that may be necessary for obtaining payment of any monies due from a contributory or from his estate, and which act cannot be conveniently done in the name of the company; and in all cases where he takes out letters of administration, or otherwise uses his official name for obtaining payment of any monies due from a contributory, such monies shall, for the purpose of enabling him to take out such letters or recover such monies, be deemed to be due to the official liquidator himself :

To do and execute all such other things as may be necessary for winding-up the affairs of the company and distributing its assets (a).

96. The Court may provide by any order that the official liquidator may exercise any of the above powers without the sanction or intervention of the Court, and where an official liquidator is provisionally appointed may limit and restrict his powers by the order appointing him.

Discretion
of official
liquidator.

97. [This section is now repealed by 53 & 54 Vict. c. 63, s. 33.]

Ordinary Powers of Court.

98. As soon as may be after making an order for winding-up the company, the Court shall settle a list of contributories, with power to rectify the register of members in all cases where such rectification is required in pursuance of this Act, and shall cause the assets of the company to be collected, and applied in discharge of its liabilities.

Collection
and applica-
tion of assets.

99. In settling the list of contributories, the Court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or being liable to the debts of others; it shall not be necessary, where the personal representative of any deceased contributory is placed on the list, to add the heirs or devisees of such contributory, nevertheless such heirs or devisees may be added as and when the Court thinks fit.

Provision as
to represen-
tative contri-
butories.

(a) See now s. 12 of the Act of 1890.

Power of Court to require delivery of property.

100. The Court may, at any time after making an order for winding-up a company, require any contributory for the time being settled on the list of contributories, trustee, receiver, banker, or agent, or officer of the company to pay, deliver, convey, surrender, or transfer forthwith, or within such time as the Court directs, to or into the hands of the official liquidator, any sum or balance, books, papers, estate, or effects which happen to be in his hands for the time being, and to which the company is *prima facie* entitled.

Power of Court to order payment of debts by contributory.

101. The Court may, at any time after making an order for winding-up the company, make an order on any contributory for the time being settled on the list of contributories, directing payment to be made, in manner in the said order mentioned, of any monies due from him or from the estate of the person whom he represents to the company, exclusive of any monies which he or the estate of the person whom he represents may be liable to contribute by virtue of any call made or to be made by the Court in pursuance of this part of this Act; and it may, in making such order, when the company is not limited, allow to such contributory by way of set-off any monies due to him or the estate which he represents from the company on any independent dealing or contract with the company, but not any monies due to him as a member of the company in respect of any dividend or profit:

Provided that when all the creditors of any company whether limited or unlimited are paid in full, any monies due on any account whatever to any contributory from the company may be allowed to him by way of set-off against any subsequent call or calls.

Power of Court to make calls.

102. The Court may, at any time after making an order for winding-up a company, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on and order payment thereof by all or any of the contributories, for the time being settled on the list of contributories, to the extent of their liability, for payment of all or any sums it deems necessary to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves, and it may, in making a call, take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same.

Power of Court to order payment into Bank.

103. The Court may order any contributory purchaser, or other person from whom money is due to the company, to pay the same into the Bank of England or any branch thereof to the account of the official liquidator instead of to the official liquidator, and such order may be enforced in the same manner as if it had directed payment to the official liquidator.

Regulation of account with Court.

104. All monies, bills, notes, and other securities paid and delivered into the Bank of England or any branch thereof in the event of a company being wound up by the Court, shall be subject to such order and regulation for the keeping of the account of such monies and other effects, and for the payment and delivery in, or investment and payment and delivery out of the same as the Court may direct.

Provision in case of representative contributory not paying monies ordered.

105. If any person made a contributory as personal representative of a deceased contributory makes default in paying any sum ordered to be paid by him, proceedings may be taken for administering the personal and real estates of such deceased contributory, or either of such estates, and of compelling payment thereof of the monies due.

Order conclusive evidence.

106. Any order made by the Court in pursuance of this Act upon any contributory shall, subject to the provisions herein contained for appealing against such order, be conclusive evidence that the monies, if any, thereby appearing to be due or ordered to be paid are due, and all other pertinent matters stated in such order are to be taken to be truly stated as against all persons, and in all proceedings whatsoever, with the exception of proceedings taken against the real estate of any deceased contributory, in which case such order shall only be *prima facie* evidence for the purpose of charging his real estate, unless his heirs or devisees were on the list of contributories at the time of the order being made.

Court may exclude

107. The Court may fix a certain day or certain days on or within which

creditors of the company are to prove their debts or claims, or to be excluded from the benefit of any distribution made before such debts are proved.

108. If in the course of proving the debts and claims of creditors in the Court of the vice-warden of the Stannaries any debt or claim is disputed by the official liquidator or by any creditor or contributory, or appears to the Court to be open to question, the Court shall have power, subject to appeal as hereinafter provided, to adjudicate upon it, and for that purpose the said Court shall have and exercise all needful powers of inquiry touching the same by affidavit or by oral examination of witnesses or of parties, whether voluntarily offering themselves for examination or summoned to attend by compulsory process of the Court, or to produce documents before the Court; and the Court shall also have power incidentally, to decide on the validity and extent of any lien or charge claimed by any creditor on any property of the company in respect of such debt, and to make declarations of right, binding on all persons interested; and for the more satisfactory determination of any question of fact, or mixed question of law and fact arising on such inquiry, the vice-warden shall have power, if he thinks fit, to direct and settle any action or issue to be tried either on the common law side of his Court, or by a common or special jury, before the Justices of Assize in and for the counties of Cornwall or Devon, or at any sitting of one of the superior Courts in London or Middlesex, which action or issue shall accordingly be tried in due course of law, and without other or further consent of parties; and the finding of the jury in such action or issue shall be conclusive of the facts found, unless the judge who tried it makes known to the vice-warden that he was not satisfied with the finding, or unless it appears to the vice-warden that, in consequence of miscarriage, accident, or the subsequent discovery of fresh material evidence, such finding ought not to be conclusive.

109. The Court shall adjust the rights of the contributories amongst themselves, and distribute any surplus that may remain amongst the parties entitled thereto.

110. The Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the estate of the company of the costs, charges, and expenses incurred in winding-up any company in such order of priority as the Court thinks just.

111. When the affairs of the company have been completely wound up, the Court shall make an order that the company be dissolved from the date of such order, and the company shall be dissolved accordingly.

112. Any order so made shall be reported by the official liquidator to the registrar, who shall make a minute accordingly in his books of the dissolution of such company.

113. If the official liquidator makes default in reporting to the registrar, in the case of a company being wound up by the Court, the order that the company be dissolved, he shall be liable to a penalty not exceeding five pounds for every day during which he is so in default.

[S. 114, providing that the petition should be *lis pendens*, is repealed by 30 & 31 Vict. c. 47, s. 1.]

Extraordinary Powers of Court.

115. The Court may, after it has made an order for winding-up the company, summon before it any officer of the company or person known or suspected to have in his possession any of the estate or effects of the company, or supposed to be indebted to the company, or any person whom the Court may deem capable of giving information concerning the trade, dealings, estate, or effects of the company; and the Court may require any such officer or person to produce any books, papers, deeds, writings, or other documents in his custody or power relating to the company; and if any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the Court at the time appointed, having no lawful impediment (made known to the Court at the time of its sitting, and allowed by it), the Court may cause such person to be apprehended, and brought before the Court for examination; nevertheless, in cases where any person claims any

creditors not proving within certain time.

Proceedings in the Court of the vice-warden of the Stannaries on proof of debts.

Court to adjust rights of contributories.

Court to order costs.

Dissolution of company.

Registrar to make minute of dissolution of company.

Penalty on not reporting dissolution of company.

Power of Court to summon persons before it suspected of having property of company.

lien on papers, deeds, or writings or documents produced by him, such production shall be without prejudice to such lien, and the Court shall have jurisdiction in the winding-up to determine all questions relating to such lien.

Special provisions as to Court of vice-warden of the Stannaries.

116. If, after an order for winding-up in the Court of the vice-warden of the Stannaries, it appears that any person claims property in, or any lien, legal or equitable, upon any of the machinery, materials, ores, or effects on the mine, or on premises occupied by the company in connection with the mine, or to which the company was at the time of the order *prima facie* entitled, it shall be lawful for the vice-warden or the registrar to adjudicate upon such claim on interpleader in the manner provided by section eleven of the Act passed in the eighteenth year of the reign of Her present Majesty, chapter thirty-two: and any action or issue directed upon such interpleader may, if the vice-warden think fit, be tried in his Court or at the Assizes or the sittings in London or Middlesex, before a judge of one of the Superior Courts, in the manner and on the terms and conditions hereinbefore provided in the case of disputed debts and claims of creditors.

Examination of parties by Court.

117. The Court may examine upon oath, either by word of mouth or upon written interrogatories, any person appearing or brought before them in manner aforesaid concerning the affairs, dealings, estate, or effects of the company, and may reduce into writing the answers of every such person, and require him to subscribe the same.

Power to arrest contributory about to abscond, or to remove or conceal any of his property.

118. The Court may, at any time before or after it has made an order for winding-up a company, upon proof being given that there is probable cause for believing that any contributory to such company is about to quit the United Kingdom, or otherwise abscond or to remove or conceal any of his goods or chattels, for the purpose of evading payment of calls, or for avoiding examination in respect of the affairs of the company, cause such contributory to be arrested, and his books, papers, monies, securities for monies, goods, and chattels to be seized, and him and them to be safely kept until such time as the Court may order.

Powers of Court cumulative.

119. Any powers by this Act conferred on the Court shall be deemed to be in addition to and not in restriction of any other powers subsisting, either at law or in equity, of instituting proceedings against any contributory, or the estate of any contributory, or against any debtor of the company, for the recovery of any call or other sums due from such contributory or debtor, or his estate, and such proceedings may be instituted accordingly.

Enforcement of and Appeal from Orders.

Power to enforce orders.

120. All orders made by the Court of Chancery in England or Ireland under this Act may be enforced in the same manner in which orders of such Court of Chancery made in any suit pending therein may be enforced, and for the purposes of this part of this Act the Court of the vice-warden of the Stannaries shall, in addition to its ordinary powers, have the same power of enforcing any orders made by it as the Court of Chancery in England has in relation to matters within the jurisdiction of such Court, and for the last-mentioned purposes the jurisdiction of the vice-warden of the Stannaries shall be deemed to be co-extensive in local limits with the jurisdiction of the Court of Chancery in England.

Power to order contributories in Scotland to pay calls.

121. Where an order, interlocutor, or decree has been made in Scotland for winding-up a company by the Court, it shall be competent to the Court in Scotland during session, and to the Lord Ordinary on the bills during vacation, on production by the liquidators of a list certified by them of the names of the contributories liable in payment of any calls which they may wish to enforce, and of the amount due by each contributory respectively, and of the date when the same became due, to pronounce forthwith a decree against such contributories for payment of the sums so certified to be due by each of them respectively, with interest from the said date till payment, at the rate of five pounds per centum per annum, in the same way and to the same effect as if they had severally consented to registration for execution, on a charge of six days, of a legal obligation to pay such calls and interest; and such decree may be extracted immediately and no suspension thereof shall be

competent, except on caution or consignment, unless with special leave of the Court or Lord Ordinary.

122. Any order made by the Court in England for or in the course of the winding-up of a company under this Act shall be enforced in Scotland and Ireland in the Courts that would respectively have had jurisdiction in respect of such company if the registered office of the company had been situate in Scotland or Ireland, and in the same manner in all respects as if such order had been made by the Courts that are hereby required to enforce the same; and in like manner orders, interlocutors, and decrees made by the Court in Scotland for or in the course of the winding-up of a company shall be enforced in England and Ireland, and orders made by the Court in Ireland for or in the course of winding-up a company shall be enforced in England and Scotland by the Courts which would respectively have had jurisdiction in the matter of such company if the registered office of the company were situate in the division of the United Kingdom where the order is required to be enforced, and in the same manner in all respects as if such order had been made by the Court required to enforce the same in the case of a company within its own jurisdiction.

Order made in England to be enforced in Ireland and Scotland.

123. Where any order, interlocutor, or decree made by one Court is required to be enforced by another Court, as hereinbefore provided, an office copy of the order, interlocutor, or decree so made shall be produced to the proper officer of the Court required to enforce the same, and the production of such office copy shall be sufficient evidence of such order, interlocutor, or decree having been made, and thereupon such last-mentioned Court shall take such steps in the matter as may be requisite for enforcing such order, interlocutor, or decree in the same manner as if it were the order, interlocutor, or decree of the Court enforcing the same.

Mode of dealing with orders to be enforced by other Courts.

124. Rehearings of and appeals from any order or decision made or given in the matter of the winding-up of a company by any Court having jurisdiction under this Act may be had in the same manner and subject to the same conditions in and subject to which appeals may be had from any order or decision of the same Court in cases within its ordinary jurisdiction; subject to this restriction, that no such rehearing or appeal shall be heard unless notice of the same is given within three weeks after any order complained of has been made, in manner in which notices of appeal are ordinarily given, according to the practice of the Court appealed from, unless such time is extended by the Court of Appeal: provided that it shall be lawful for the lord-warden of the Stannaries, by a special or general order, to remit at once any appeal allowed and regularly lodged with him against any order or decision of the vice-warden made in the matter of a winding-up to the Court of Appeal in Chancery, which Court shall thereupon hear and determine such appeal, and have power to require all such certificates of the vice-warden, records of proceedings below, documents, and papers as the lord-warden would or might have required upon the hearing of such appeal, and to exercise all other the jurisdiction and powers of the lord-warden specified in the Act of Parliament passed in the eighteenth year of the reign of Her present Majesty, chapter thirty-two, and any order so made by the Court of Appeal in Chancery shall be final without any further appeal.

Appeals from orders.

[125. Judicial notice to be taken of signature of officers.]

126. The *Commissioners of the Court of Bankruptcy* and the judges of the County Courts in England who sit at places more than twenty miles from the General Post Office, and the commissioners of bankrupt and the assistant barristers and recorders in Ireland, and the sheriffs of counties in Scotland, shall be commissioners for the purpose of taking evidence under this Act in cases where any company is wound up in any part of the United Kingdom, and it shall be lawful for the Court to refer the whole or any part of the examination of any witnesses under this Act to any person hereby appointed commissioner, although such commissioner is out of the jurisdiction of the Court that made the order or decree for winding up the company; and every such commissioner shall, in addition to any power of summoning and examining witnesses, and requiring the production or delivery of documents, and certifying or punishing defaults by witnesses, which he might lawfully

Special commissioners for receiving evidence.

exercise as a commissioner of the Court of Bankruptcy, judge of a County Court, commissioner of bankrupt, assistant barrister, or recorder, or as a sheriff of a county, have in the matter so referred to him all the same powers of summoning and examining witnesses, and requiring the production or delivery of documents, and punishing defaults by witnesses, and allowing costs and charges and expenses to witnesses, as the Court which made the order for winding-up the company has; and the examination so taken shall be returned or reported to such last-mentioned Court in such manner as it directs.

[The words of this section printed in italics were repealed by the Statute Law Revision Act, 1875.]

Court may order the examination of persons in Scotland.

127. The Court may direct the examination in Scotland of any person for the time being in Scotland, whether a contributory of the company or not, in regard to the estate, dealings, or affairs of any company in the course of being wound up, or in regard to the estate, dealings, or affairs of any person being a contributory of the company, so far as the company may be interested therein by reason of his being such contributory, and the order or commission to take such examination shall be directed to the sheriff of the county in which the person to be examined is residing or happens to be for the time, and the sheriff shall summon such person to appear before him at a time and place to be specified in the summons for examination upon oath as a witness or as a haver, and to produce any books, papers, deeds, or documents called for which may be in his possession or power, and the sheriff may take such examination either orally or upon written interrogatories, and shall report the same in writing in the usual form to the Court, and shall transmit with such report the books, papers, deeds, or documents produced, if the originals thereof are required and specified by the order, or otherwise such copies thereof or extracts therefrom, authenticated by the sheriff, as may be necessary; and in case any person so summoned fails to appear at the time and place specified, or appearing refuses to be examined or to make the production required, the sheriff shall proceed against such person as a witness or haver duly cited and failing to appear or refusing to give evidence or make production may be proceeded against by the law of Scotland; and the sheriff shall be entitled to such and the like fees, and the witness shall be entitled to such and the like allowances, as sheriffs when acting as commissioners under appointment from the Court of Session and as witnesses and havers are entitled to in the like cases according to the law and practice of Scotland: If any objection is stated to the sheriff by the witness, either on the ground of incompetency as a witness, or as to the production required to be made, or on any other ground whatever, the sheriff may, if he thinks fit, report such objection to the Court, and suspend the examination of such witness until such objection has been disposed of by the Court.

Affidavits, &c., may be sworn in Ireland, Scotland, or the Colonies before any competent Court or person.

128. Any affidavit, affirmation, or declaration required to be sworn or made under the provisions or for the purposes of this part of this Act may be lawfully sworn or made in Great Britain or Ireland, or in any colony, island, plantation, or place under the dominion of Her Majesty in foreign parts, before any Court, judge, or person lawfully authorized to take and receive affidavits, affirmations, or declarations, or before any of Her Majesty's consuls or vice-consuls in any foreign parts out of Her Majesty's dominions, and all Courts, judges, justices, commissioners, and persons acting judicially shall take judicial notice of the seal or stamp or signature (as the case may be) of any such Court, judge, person, consul, or vice-consul attached, appended, or subscribed to any such affidavit, affirmation, or declaration, or to any other document to be used for the purposes of this part of this Act.

Voluntary Winding-up of Company.

129. A company under this Act may be wound up voluntarily:—

- (1.) Whenever the period, if any, fixed for the duration of the company by the articles of association expires, or whenever the event, if any, occurs, upon the occurrence of which it is provided by the articles of association that the company is to be dissolved; and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily:

Circumstances under which company may be wound up voluntarily.

(2.) Whenever the company has passed a special resolution requiring the company to be wound up voluntarily :

(3.) Whenever the company has passed an extraordinary resolution to the effect that it has been proved to their satisfaction that the company cannot by reason of its liabilities continue its business, and that it is advisable to wind up the same :

For the purposes of this Act any resolution shall be deemed to be extraordinary which is passed in such manner as would, if it had been confirmed by a subsequent meeting, have constituted a special resolution as hereinbefore defined.

130. A voluntary winding-up shall be deemed to commence at the time of the passing of the resolution authorizing such winding-up.

131. Whenever a company is wound up voluntarily the company shall, from the date of the commencement of such winding-up, cease to carry on its business, except in so far as may be required for the beneficial winding-up thereof, and all transfers of shares, except transfers made to or with the sanction of the liquidators, or alteration in the status of the members of the company, taking place after the commencement of such winding-up, shall be void, but its corporate state and all its corporate powers shall, notwithstanding it is otherwise provided by its regulations, continue until the affairs of the company are wound up.

132. Notice of any special resolution or extraordinary resolution passed for winding-up a company voluntarily shall be given by advertisement as respects companies registered in England in the *London Gazette*, as respects companies registered in Scotland in the *Edinburgh Gazette*, and as respects companies registered in Ireland in the *Dublin Gazette*.

133. The following consequences shall ensue upon the voluntary winding-up of a company :

(1.) The property of the company shall be applied in satisfaction of its liabilities *pari passu*, and, subject thereto, shall, unless it be otherwise provided by the regulations of the company, be distributed amongst the members according to their rights and interests in the company :

(2.) Liquidators shall be appointed for the purpose of winding-up the affairs of the company and distributing the property :

(3.) The company in general meeting shall appoint such persons or person as it thinks fit to be liquidators or a liquidator, and may fix the remuneration to be paid to them or him :

(4.) If one person only is appointed, all the provisions herein contained in reference to several liquidators shall apply to him :

(5.) Upon the appointment of liquidators all the power of the directors shall cease, except in so far as the company in general meeting or the liquidators may sanction the continuance of such powers :

(6.) When several liquidators are appointed, every power hereby given may be exercised by such one or more of them as may be determined at the time of their appointment, or in default of such determination by any number not less than two :

(7.) The liquidators may, without the sanction of the Court, exercise all powers by this Act given to the official liquidator :

(8.) The liquidators may exercise the powers hereinbefore given to the Court of settling the list of contributories of the company, and any list so settled shall be *prima facie* evidence of the liability of the persons named therein to be contributories :

(9.) The liquidators may at any time after the passing of the resolution for winding-up the company, and before they have ascertained the sufficiency of the assets of the company, call on all or any of the contributories for the time being settled on the list of contributories to the extent of their liability to pay all or any sums they deem necessary to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves; and the liquidators may in making a call take into consideration the

Commencement of voluntary winding-up.
Effect of voluntary winding-up on status of company.

Notice of resolution to wind up voluntarily.

Consequences of voluntary winding-up.

probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same :

(10.) The liquidators shall pay the debts of the company, and adjust the rights of the contributories amongst themselves.

Effect of winding-up on share capital of company limited by guarantee.

134. Where a company limited by guarantee, and having a capital divided into shares, is being wound up voluntarily, any share capital that may not have been called up shall be deemed to be assets of the company, and to be a specialty debt due from each member to the company to the extent of any sums that may be unpaid on any shares held by him, and payable at such time as may be appointed by the liquidators.

Power of company to delegate authority to appoint liquidators.

135. A company about to be wound up voluntarily, or in the course of being wound up voluntarily, may, by an extraordinary resolution, delegate to its creditors, or to any committee of its creditors, the power of appointing liquidators or any of them, and supplying any vacancies in the appointment of liquidators, or may by a like resolution enter into any arrangement with respect to the powers to be exercised by the liquidators, and the manner in which they are to be exercised ; and any act done by the creditors in pursuance of such delegated power shall have the same effect as if it had been done by the company.

Arrangement when binding on creditors.

136. Any arrangement entered into between a company about to be wound up voluntarily, or in the course of being wound up voluntarily, and its creditors, shall be binding on the company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors, subject to such right of appeal as is hereinafter mentioned.

Power of creditor or contributory to appeal.

137. Any creditor or contributory of a company that has in manner aforesaid entered into any arrangement with its creditors may, within three weeks from the date of the completion of such arrangement, appeal to the Court against such arrangement, and the Court may thereupon, as it thinks just, amend, vary, or confirm the same.

Power for liquidators or contributories in voluntary winding-up to apply to Court.

138. Where a company is being wound up voluntarily the liquidators or any contributory of the company may apply to the Court in England, Ireland, or Scotland, or to the Lord Ordinary on the bills in Scotland, in time of vacation, to determine any question arising in the matter of such winding-up, or to exercise, as respects the enforcing of calls, or in respect of any other matter, all or any of the powers which the Court might exercise if the company were being wound up by the Court ; and the Court or Lord Ordinary, in the case aforesaid, if satisfied that the determination of such question, or the required exercise of power, will be just and beneficial, may accede, wholly or partially, to such application, on such terms and subject to such conditions as the Court thinks fit, or it may make such other order, interlocutor, or decree on such application as the Court thinks just.

Power of liquidators to call general meeting.

139. Where a company is being wound up voluntarily the liquidators may from time to time, during the continuance of such winding-up, summon general meetings of the company for the purpose of obtaining the sanction of the company by special resolution or extraordinary resolution, or for any other purposes they think fit ; and in the event of the winding-up continuing for more than one year, the liquidators shall summon a general meeting of the company at the end of the first year, and of each succeeding year from the commencement of the winding-up, or as soon thereafter as may be convenient, and shall lay before such meeting an account showing their acts and dealings, and the manner in which the winding-up has been conducted during the preceding year.

Power to fill up vacancy in liquidators.

140. If any vacancy occurs in the office of liquidators appointed by the company, by death, resignation, or otherwise, the company in general meeting may, subject to any arrangement they may have entered into with their creditors, fill up such vacancy, and a general meeting for the purpose of filling up such vacancy may be convened by the continuing liquidators, if any, or by any contributory of the company, and shall be deemed to have been duly held if held in manner prescribed by the regulations of the company, or in such other manner as may, on application by the continuing liquidator, if any, or by any contributory of the company, be determined by the Court.

141. If from any cause whatever there is no liquidator acting in the case of a voluntary winding-up, the Court may, on the application of a contributory, appoint a liquidator or liquidators; the Court may also, on due cause shown, remove any liquidator, and appoint another liquidator to act in the matter of voluntary winding-up.

Power of Court to appoint liquidators.

142. As soon as the affairs of the company are fully wound up, the liquidators shall make up an account showing the manner in which such winding-up has been conducted, and the property of the company disposed of; and thereupon they shall call a general meeting of the company for the purpose of having the account laid before them, and hearing any explanation that may be given by the liquidators: The meeting shall be called by advertisement, specifying the time, place, and object of such meeting; and such advertisement shall be published one month at least previously to the meeting, as respects companies registered in England in the *London Gazette*, and as respects companies registered in Scotland in the *Edinburgh Gazette*, and as respects companies registered in Ireland in the *Dublin Gazette*.

Liquidators on conclusion of winding-up to make up an account.

143. The liquidators shall make a return to the registrar of such meeting having been held, and of the date at which the same was held, and on the expiration of three months from the date of the registration of such return the company shall be deemed to be dissolved: If the liquidators make default in making such return to the registrar they shall incur a penalty not exceeding five pounds for every day during which such default continues.

Liquidators to report meeting to registrar.

144. All costs, charges, and expenses properly incurred in the voluntary winding-up of a company, including the remuneration of the liquidators, shall be payable out of the assets of the company in priority to all other claims.

Cost of voluntary liquidation.

145. The voluntary winding-up of a company shall not be a bar to the right of any creditor of such company to have the same wound up by the Court, if the Court is of opinion that the rights of such creditor will be prejudiced by a voluntary winding-up.

Saving of rights of creditors.

146. Where a company is in course of being wound up voluntarily, and proceedings are taken for the purpose of having the same wound up by the Court, the Court may, if it thinks fit, notwithstanding that it makes an order directing the company to be wound up by the Court, provide in such order or in any other order for the adoption of all or any of the proceedings taken in the course of the voluntary winding-up.

Power of Court to adopt proceedings of voluntary winding-up.

Winding-up subject to the Supervision of the Court.

147. When a resolution has been passed by a company to wind up voluntarily, the Court may make an order directing that the voluntary winding-up should continue, but subject to such supervision of the Court, and with such liberty for creditors, contributories, or others to apply to the Court, and generally upon such terms and subject to such conditions as the Court thinks just.

Power of Court, on application, to direct winding-up, subject to supervision.

148. A petition, praying wholly or in part that a voluntary winding-up should continue, but subject to the supervision of the Court, and which winding-up is hereinafter referred to as a winding-up subject to the supervision of the Court, shall, for the purpose of giving jurisdiction to the Court over suits and actions, be deemed to be a petition for winding-up the company by the Court.

Petition for winding-up, subject to supervision.

149. The Court may, in determining whether a company is to be wound up altogether by the Court or subject to the supervision of the Court, in the appointment of liquidator or liquidators, and in all other matters relating to the winding-up subject to supervision, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence, and may direct meetings of the creditors or contributories to be summoned, held, and regulated in such manner as the Court directs, for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the Court: In the case of creditors, regard shall be had to the value of the debts due to each creditor, and in the case of contributories to the number of votes conferred on each contributory by the regulations of the company.

Court may have regard to wishes of creditors.

Power to Court to appoint additional liquidators in winding-up subject to supervision.

150. Where any order is made by the Court for a winding-up subject to the supervision of the Court, the Court may, in such order or in any subsequent order, appoint any additional liquidator or liquidators; and any liquidators so appointed by the Court shall have the same powers, be subject to the same obligations, and in all respects stand in the same position as if they had been appointed by the company: The Court may from time to time remove any liquidators so appointed by the Court, and fill up any vacancy occasioned by such removal, or by death or resignation.

Effect of order of Court for winding-up subject to supervision.

151. Where an order is made for a winding-up subject to the supervision of the Court, the liquidators appointed to conduct such winding-up may, subject to any restrictions imposed by the Court, exercise all their powers, without the sanction or intervention of the Court, in the same manner as if the company were being wound up altogether voluntarily; but save as aforesaid, any order made by the Court for a winding-up subject to the supervision of the Court shall for all purposes, including the staying of actions, suits, and other proceedings, be deemed to be an order of the Court for winding-up the company by the Court, and shall confer full authority on the Court to make calls, or to enforce calls made by the liquidators, and to exercise all other powers which it might have exercised if an order had been made for winding-up the company altogether by the Court; and in the construction of the provisions whereby the Court is empowered to direct any act or thing to be done to or in favour of the official liquidators, the expression official liquidators shall be deemed to mean the liquidators conducting the winding-up subject to the supervision of the Court.

Appointment in certain cases of voluntary liquidators to office of official liquidators.

152. Where an order has been made for the winding-up of a company subject to the supervision of the Court, and such order is afterwards superseded by an order directing the company to be wound up compulsorily, the Court may in such last-mentioned order, or in any subsequent order, appoint the voluntary liquidators or any of them, either provisionally or permanently, and either with or without the addition of any other persons, to be official liquidators.

Supplemental Provisions.

Dispositions after the commencement of the winding-up avoided.

153. Where any company is being wound up by the Court or subject to the supervision of the Court, all dispositions of the property, effects, and things in action of the company, and every transfer of shares, or alteration in the status of the members of the company, made between the commencement of the winding-up and the order for winding-up, shall, unless the Court otherwise orders, be void.

The books of the company to be evidence.

154. Where any company is being wound up, all books, accounts, and documents of the company and of the liquidators shall, as between the contributories of the company, be *prima facie* evidence of the truth of all matters purporting to be therein recorded.

As to disposal of books, accounts, and documents of the company.

155. Where any company has been wound up under this Act and is about to be dissolved, the books, accounts, and documents of the company and of the liquidators may be disposed of in the following way; that is to say, where the company has been wound up by or subject to the supervision of the Court, in such way as the Court directs, and where the company has been wound up voluntarily, in such way as the company by an extraordinary resolution directs; but after the lapse of five years from the date of such dissolution, no responsibility shall rest on the company or the liquidators, or any one to whom the custody of such books, accounts, and documents has been committed, by reason that the same or any of them cannot be made forthcoming to any party or parties claiming to be interested therein.

Inspection of books.

156. Where an order has been made for winding-up a company by the Court or subject to the supervision of the Court, the Court may make such order for the inspection by the creditors and contributories of the company of its books and papers as the Court thinks just, and any books and papers in the possession of the company may be inspected by creditors or contributories in conformity with the order of the Court, but not further or otherwise.

157. Any person to whom any thing in action belonging to the company is assigned in pursuance of this Act may bring or defend any action or suit relating to such thing in action in his own name.

Power of assignee to sue.

[See now s. 25 of the Judicature Act, 1873.]

158. In the event of any company being wound up under this Act, all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as is possible, of the value of all such debts or claims as may be subject to any contingency or sound only in damages, or for some other reason do not bear a certain value.

Debts of all descriptions to be proved.

159. The liquidators may, with the sanction of the Court, where the company is being wound up by the Court or subject to the supervision of the Court, and with the sanction of an extraordinary resolution of the company where the company is being wound up altogether voluntarily, pay any classes of creditors in full, or make such compromise or other arrangement as the liquidators may deem expedient with creditors or persons claiming to be creditors, or persons having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable (a).

General scheme of liquidation may be sanctioned.

160. The liquidators may, with the sanction of the Court where the company is being wound up by the Court or subject to the supervision of the Court, and with the sanction of an extraordinary resolution of the company where the company is being wound up altogether voluntarily, compromise all calls and liabilities to calls, debts, and liabilities capable of resulting in debts, and all claims, whether present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and any contributory or alleged contributory, or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets of the company or the winding-up of the company, upon the receipt of such sums, payable at such times and generally upon such terms as may be agreed upon, with power for the liquidators to take any security for the discharge of such debts or liabilities, and to give complete discharges in respect of all or any such calls, debts, or liabilities (a).

Power to compromise.

161. Where any company is proposed to be or is in the course of being wound up altogether voluntarily, and the whole or a portion of its business or property is proposed to be transferred or sold to another company, the liquidators of the first-mentioned company may, with the sanction of a special resolution of the company by whom they were appointed, conferring either a general authority on the liquidators, or an authority in respect of any particular arrangement, receive in compensation or part compensation for such transfer or sale shares, policies, or other like interests in such other company, for the purpose of distribution amongst the members of the company being wound up, or may enter into any other arrangement whereby the members of the company being wound up may, in lieu of receiving cash, shares, policies, or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the purchasing company; and any sale made or arrangement entered into by the liquidators in pursuance of this section shall be binding on the members of the company being wound up; subject to this proviso, that if any member of the company being wound up who has not voted in favour of the special resolution passed by the company of which he is a member at either of the meetings held for passing the same expresses his dissent from any such special resolution in writing addressed to the liquidators or one of them, and left at the registered office of the company not later than seven days after the date of the meeting at which such special resolution was passed, such dissentient member may require the liquidators to do one of the following things as the liquidators may prefer; that is to say, either to abstain from carrying such resolution into effect, or to purchase the interest held by such dissentient member at a

Power for liquidators to accept shares, &c., as a consideration for sale of property of company.

(a) See now s. 12 of the Act of 1890.

price to be determined in manner hereinafter mentioned, such purchase money to be paid before the company is dissolved, and to be raised by the liquidators in such manner as may be determined by special resolution: no special resolution shall be deemed invalid for the purpose of this section by reason that it is passed antecedently to or concurrently with any resolution for winding-up the company, or for appointing liquidators; but if an order be made within a year for winding up the company by or subject to the supervision of the Court, such resolution shall not be of any validity unless it is sanctioned by the Court.

Mode of
determining
price.

162. The price to be paid for the purchase of the interest of any dissentient member may be determined by agreement, but if the parties dispute about the same such dispute shall be settled by arbitration, and for the purposes of such arbitration the provisions of "The Companies Clauses Consolidation Act, 1845," with respect to the settlement of disputes by arbitration, shall be incorporated with this Act; and in the construction of such provisions this Act shall be deemed to be the special Act, and "the company" shall mean the company that is being wound up, and any appointment by the said incorporated provisions directed to be made under the hand of the secretary, or any two of the directors, may be made under the hand of the liquidator, if only one, or any two or more of the liquidators if more than one.

Certain at-
tachments,
sequestra-
tions, and
executions
to be void.

163. Where any company is being wound up by the Court or subject to the supervision of the Court, any attachment, sequestration, distress, or execution put in force against the estate or effects of the company after the commencement of the winding-up shall be void to all intents.

Fraudulent
preference.

164. Any such conveyance, mortgage, delivery of goods, payment, execution, or other Act relating to property as would, if made or done by or against any individual trader, be deemed in the event of his bankruptcy to have been made or done by way of undue or fraudulent preference of the creditors of such trader, shall, if made or done by or against any company, be deemed, in the event of such company being wound up under this Act, to have been made or done by way of undue or fraudulent preference of the creditors of such company, and shall be invalid accordingly; and for the purposes of this section the presentation of a petition for winding-up a company shall, in the case of a company being wound up by the Court or subject to the supervision of the Court, and a resolution for winding-up the company shall, in the case of a voluntary winding-up, be deemed to correspond with the act of bankruptcy, in the case of an individual trader; and any conveyance or assignment made by any company formed under this Act of all its estate and effects to trustees for the benefit of all its creditors shall be void to all intents.

Penalty on
falsification
of books.

[165. This section is now repealed by 53 & 54 Vict. c. 63, s. 33.]

166. If any director, officer, or contributory of any company wound up under this Act destroys, mutilates, alters, or falsifies any books, papers, writings, or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account, or other document belonging to the company with intent to defraud or deceive any person, every person so offending shall be deemed to be guilty of a misdemeanour, and upon being convicted shall be liable to imprisonment for any term not exceeding two years, with or without hard labour.

Prosecution
of delinquent
directors in
the case of
winding-up
by Court.

167. Where any order is made for winding-up a company by the Court or subject to the supervision of the Court, if it appear in the course of such winding-up that any past or present director, manager, officer, or member of such company has been guilty of any offence in relation to the company for which he is criminally responsible, the Court may, on the application of any person interested in such winding-up, or of its own motion, direct the official liquidator, or the liquidators (as the case may be), to institute and conduct a prosecution or prosecutions for such offence, and may order the costs and expenses to be paid out of the assets of the company.

Prosecution
of delinquent
directors,
&c., in case
of voluntary
winding-up.

168. Where a company is being wound up altogether voluntarily, if it appear to the liquidators conducting such winding-up that any past or present director, manager, officer, or member of such company has been guilty of any offence in relation to the company for which he is criminally responsible, it shall be lawful for the liquidators, with the previous sanction of the Court,

to prosecute such offender, and all expenses properly incurred by them in such prosecution shall be payable out of the assets of the company in priority to all other liabilities.

169. If any person, upon any examination upon oath or affirmation authorized under this Act, or in any affidavit, deposition, or solemn affirmation in or about the winding-up of any company under this Act or otherwise in or about any matter arising under this Act, wilfully and corruptly gives false evidence, he shall, upon conviction, be liable to the penalties of wilful perjury.

Penalty of perjury.

Power of Courts to make Rules.

[S. 170, which gave power to the Lord Chancellor of Great Britain to make rules, was repealed by the Statute Law Revision Act, 1881. See s. 20 of the Act of 1867.]

[171. Power of Court of Session in Scotland to make rules.]

[172. Power to make rules in Stannaries Court.]

[173. Power of Lord Chancellor of Ireland to make rules.]

PART V.

REGISTRATION OFFICE.

[174. Constitution of registration office.] The registration of companies under this Act shall be conducted as follows (that is to say):—

- (5.) Every person may inspect the documents kept by the registrar of joint stock companies; and there shall be paid for such inspection such fees as may be appointed by the Board of Trade, not exceeding one shilling for each inspection; and any person may require a certificate of the incorporation of any company, or a copy or extract of any other document or any part of any other document, to be certified by the registrar: and there shall be paid for such certificate of incorporation, certified copy, or extract, such fees as the Board of Trade may appoint, not exceeding five shillings for the certificate of incorporation, and not exceeding sixpence for each folio of such copy or extract, or in Scotland for each sheet of two hundred words.

PART VI.

APPLICATION OF ACT TO COMPANIES REGISTERED UNDER THE JOINT STOCK COMPANIES ACTS.

175. The expression "Joint Stock Companies Acts" as used in this Act shall mean "The Joint Stock Companies Act, 1856," "The Joint Stock Companies Acts, 1856, 1857," "The Joint Stock Banking Companies Act, 1857," and "The Act to enable Joint Stock Banking Companies to be formed on the Principle of Limited Liability," or any one or more of such Acts, as the case may require, but shall not include the Act passed in the eighth year of the reign of Her present Majesty, chapter one hundred and ten, and intitled *An Act for the Registration, Incorporation, and Regulation of Joint Stock Companies*.

Definition of Joint Stock Companies Acts.

176. Subject as hereinafter mentioned, this Act, with the exception of Table A in the first schedule, shall apply to companies formed and registered under the said Joint Stock Companies Acts, or any of them, in the same manner in the case of a limited company as if such company had been formed and registered under this Act as a company limited by shares, and in the case of a company other than a limited company as if such company had been

Application of Act to companies registered under Joint Stock Companies Acts.

formed and registered as an unlimited company under this Act, with this qualification, that wherever reference is made expressly or impliedly to the date of registration, such date shall be deemed to refer to the date at which such companies were respectively registered under the said Joint Stock Companies Acts or any of them, and the power of altering regulations by special resolution given by this Act shall, in the case of any company formed and registered under the said Joint Stock Companies Acts or any of them, extend to altering any provisions contained in the Table marked B annexed to "The Joint Stock Companies Act, 1856," and shall also in the case of an unlimited company formed and registered as last aforesaid extend to altering any regulations relating to the amount of capital or its distribution into shares, notwithstanding such regulations are contained in the memorandum of association.

Application
of Act to
companies
formed
under Joint
Stock Com-
panies Acts.

177. This Act shall apply to companies registered but not formed under the said Joint Stock Companies Acts or any of them, in the same manner as it is hereinafter declared to apply to companies registered but not formed under this Act, with this qualification, that wherever reference is made expressly or impliedly to the date of registration, such date shall be deemed to refer to the date at which such companies were respectively registered under the said Joint Stock Companies Acts or any of them.

Mode of
transferring
shares.

178. Any company registered under the said Joint Stock Companies Acts or any of them may cause its shares to be transferred in manner hitherto in use, or in such other manner as the company may direct.

PART VII.

COMPANIES AUTHORIZED TO REGISTER UNDER THIS ACT.

Regulation
as to regis-
tration of
existing
companies.

179. The following regulations shall be observed with respect to the registration of companies under this part of this Act; (that is to say)—

- (1.) No company having the liability of its members limited by Act of Parliament or letters patent, and not being a joint stock company as hereinafter defined, shall register under this Act in pursuance of this part thereof:
- (2.) No company having the liability of its members limited by Act of Parliament or by letters patent, shall register under this Act in pursuance of this part thereof as an unlimited company, or as a company limited by guarantee:
- (3.) No company that is not a joint stock company as hereinafter defined shall in pursuance of this part of this Act register under this Act as a company limited by shares;
- (4.) No company shall register under this Act in pursuance of this part thereof unless an assent to its so registering is given by a majority of such of its members as may be present, personally or by proxy, in cases where proxies are allowed by the regulations of the company, at some general meeting summoned for the purpose:
- (5.) Where a company not having the liability of its members limited by Act of Parliament or letters patent is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present, personally or by proxy, at such last-mentioned general meeting:
- (6.) Where a company is about to register as a company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the company, in the event of the same being wound up, during the time that he is a member, or within a year afterwards, for payment of the debts and liabilities of the company contracted before the time at which he ceased to be a member, and of the costs, charges, and expenses of winding-up the company, and for the adjustment of the rights of the contributories amongst

themselves, such amount as may be required, not exceeding a specified amount :

In computing any majority under this section when a poll is demanded regard shall be had to the number of votes to which each member is entitled according to the regulations of the company of which he is a member.

180. With the above exceptions, and subject to the foregoing regulations, every company existing at the time of the commencement of this Act, including any company registered under the said Joint Stock Companies Acts, consisting of seven or more members, and any company hereafter formed in pursuance of any Act of Parliament other than this Act, or of letters patent, or being a company engaged in working mines within and subject to the jurisdiction of the Stannaries, or being otherwise duly constituted by law, and consisting of seven or more members, may at any time hereafter register itself under this Act as an unlimited company, or a company limited by shares, or a company limited by guarantee; and no such registration shall be invalid by reason that it has taken place with a view to the company being wound up.

Companies
capable of
being
registered.

181. For the purposes of this part of this Act, so far as the same relates to the description of companies empowered to register as companies limited by shares, a joint stock company shall be deemed to be a company having a permanent paid-up or nominal capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and formed on the principle of having for its members the holders of shares in such capital, or the holders of such stock, and no other persons; and such company when registered with limited liability under this Act shall be deemed to be a company limited by shares.

Definition of
joint-stock
company.

[S. 182, providing for the case of banking companies, is repealed and replaced by s. 6 of the Companies Act, 1879.]

183. Previously to the registration in pursuance of this part of this Act of any joint stock company there shall be delivered to the registrar the following documents; (that is to say)—

Requisitions
for registra-
tion by
companies.

- (1.) A list showing the names, addresses, and occupations of all persons who on a day named in such list, and not being more than six clear days before the day of registration, were members of such company, with the addition of the shares held by such persons respectively, distinguishing, in cases where such shares are numbered, each share by its number :
- (2.) A copy of any Act of Parliament, royal charter, letters patent, deed of settlement, contract of copartnery, cost-book regulations, or other instrument constituting or regulating the company :
- (3.) If any such joint stock company is intended to be registered as a limited company, the above list and copy shall be accompanied by a statement specifying the following particulars; (that is to say)—

The nominal capital of the company and the number of shares into which it is divided :

The number of shares taken and the amount paid on each share :

The name of the company, with the addition of the word "Limited" as the last word thereof :

With the addition, in the case of a company intended to be registered as a company limited by guarantee, of the resolution declaring the amount of the guarantee.

184. Previously to the registration in pursuance of this part of this Act of any company not being a joint stock company there shall be delivered to the registrar a list showing the names, addresses, and occupations of the directors or other managers (if any) of the company, also a copy of any Act of Parliament, letters patent, deed of settlement, contract of copartnery, cost-book regulations, or other instrument constituting or regulating the company, with the addition, in the case of a company intended to be registered as a company limited by guarantee, of the resolution declaring the amount of guarantee.

Requisitions
for registra-
tion by
existing
company
not being a
joint stock
company.

Power for existing company to register amount of stock instead of shares.

Authentication of statements of existing companies.

Registrar may require evidence as to nature of company.

On registration of banking company with limited liability notice to be given to customers.

Exemption of certain companies from payment of fees.

Power to company to change name.

Certificate of registration of existing companies.

Certificate to be evidence of compliance with Act.

Transfer of property to company.

185. Where a joint stock company authorized to register under this Act has had the whole or any portion of its capital converted into stock, such company shall, as to the capital so converted, instead of delivering to the registrar a statement of shares, deliver to the registrar a statement of the amount of stock belonging to the company, and the names of the persons who were holders of such stock, on some day to be named in the statement, not more than six clear days before the day of registration.

186. The lists of members and directors and any other particulars relating to the company hereby required to be delivered to the registrar shall be verified by a declaration of the directors of the company delivering the same, or any two of them, or of any two other principal officers of the company, made in pursuance of the Act passed in the sixth year of the reign of his late Majesty King William the Fourth, chapter sixty-two.

187. The registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether an existing company is or not a joint stock company as hereinbefore defined.

188. Every banking company existing at the date of the passing of this Act which registers itself as a limited company shall, at least thirty days previous to obtaining a certificate of registration with limited liability, give notice that it is intended so to register the same to every person and partnership firm who have a banking account with the company, and such notice shall be given either by delivering the same to such person or firm, or leaving the same or putting the same into the post addressed to him or them at such address as shall have been last communicated or otherwise become known as his or their address to or by the company; and in case the company omits to give any such notice as is hereinbefore required to be given, then as between the company and the person or persons only who are for the time being interested in the account in respect of which such notice ought to have been given, and so far as respects such account and all variations thereof down to the time at which such notice shall be given, but not further or otherwise, the certificate of registration with limited liability shall have no operation.

189. No fees shall be charged in respect of the registration in pursuance of this part of this Act of any company in cases where such company is not registered as a limited company, or where previously to its being registered as a limited company the liability of the shareholders was limited by some other Act of Parliament or by letters patent.

190. Any company authorized by this part of this Act to register with limited liability shall, for the purpose of obtaining registration with limited liability, change its name by adding thereto the word "Limited."

191. Upon compliance with the requisitions in this part of this Act contained with respect to registration, and on payment of such fees, if any, as are payable under the Tables marked B and C in the first schedule hereto, the registrar shall certify under his hand that the company so applying for registration is incorporated as a company, under this Act, and in the case of a limited company, that it is limited, and thereupon such company shall be incorporated, and shall have perpetual succession and a common seal, with power to hold lands; and any banking company in Scotland so incorporated shall be deemed and taken to be a bank incorporated, constituted, or established by or under Act of Parliament.

192. A certificate of incorporation given at any time to any company registered in pursuance of this part of this Act shall be conclusive evidence that all the requisitions herein contained in respect of registration under this Act have been complied with, and that the company is authorized to be registered under this Act as a limited or unlimited company, as the case may be, and the date of incorporation mentioned in such certificate shall be deemed to be the date at which the company is incorporated under this Act.

193. All such property, real and personal, including all interests and rights in, to, and out of property, real and personal, and including obligations and things in action, as may belong to or be vested in the company at the date of its registration under this Act, shall on registration pass to and vest

in the company as incorporated under this Act, for all the estate and interest of the company therein.

194. The registration in pursuance of this part of this Act of any company shall not affect or prejudice the liability of such company to have enforced against it, or its right to enforce, any debt or obligation incurred, or any contract entered into, by, to, with, or on behalf of such company previously to such registration.

195. All such actions, suits, and other legal proceedings as may at the time of the registration of any company registered in pursuance of this part of this Act have been commenced by or against such company, or the public officer or any member thereof, may be continued in the same manner as if such registration had not taken place; nevertheless execution shall not issue against the effects of any individual member of such company upon any judgment, decree, or order obtained in any action, suit, or proceeding so commenced as aforesaid; but in the event of the property and effects of the company being insufficient to satisfy such judgment, decree, or order, an order may be obtained for winding-up the company.

196. When a company is registered under this Act in pursuance of this part thereof, all provisions contained in any Act of Parliament, deed of settlement, contract of copartnery, cost-book regulations, letters patent, or other instrument constituting or regulating the company, including, in the case of a company registered as a company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the company, in the same manner and with the same incidents as if they were contained in a registered memorandum of association and articles of association; and all the provisions of this Act shall apply to such company, and the members, contributories, and creditors thereof, in the same manner in all respects as if it had been formed under this Act, subject to the provisions following; (that is to say)—

- (1.) That Table A in the first schedule to this Act shall not, unless adopted by special resolution, apply to any company registered under this Act in pursuance of this part thereof:
- (2.) That the provisions of this Act relating to the numbering of shares shall not apply to any joint stock company whose shares are not numbered:
- (3.) That no company shall have power to alter any provision contained in any Act of Parliament relating to the company:
- (4.) That no company shall have power, without the sanction of the Board of Trade, to alter any provision contained in any letters patent relating to the company:
- (5.) That in the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted prior to registration, who is liable, at law or in equity, to pay or contribute to the payment of any debt or liability of the company contracted prior to registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members amongst themselves in respect of any such debt or liability; or to pay or contribute to the payment of the costs, charges, and expenses of winding-up the company so far as relates to such debts or liabilities as aforesaid; and every such contributory shall be liable to contribute to the assets of the company, in the course of the winding-up, all sums due from him in respect of any such liability as aforesaid; and in the event of the death, bankruptcy, or insolvency of any such contributory, as last aforesaid, or marriage of any such contributory being a female, the provisions hereinbefore contained with respect to the representatives, heirs, and devisees of deceased contributories, and with reference to the assignees of bankrupt or insolvent contributories, and to the husbands of married contributories, shall apply:
- (6.) That nothing herein contained shall authorize any company to alter any such provisions contained in any deed of settlement, contract of copartnery, cost-book regulations, letters patent, or other instrument

Registration under this Act not to affect obligations incurred previously to registration.

Continuation of existing actions and suits.

Effect of registration under Act.

constituting or regulating the company, as would, if such company had originally been formed under this Act, have been contained in the memorandum of association, and are not authorized to be altered by this Act :

But nothing herein contained shall derogate from any power of altering its constitution or regulations which may be vested in any company registering under this Act in pursuance of this part thereof by virtue of any Act of Parliament, deed of settlement, contract of copartnership, letters patent, or other instrument constituting or regulating the company.

Power of Court to restrain further proceedings.

197. The Court may at any time after the presentation of a petition for winding-up a company registered in pursuance of this part of this Act, and before making an order for winding-up the company, upon the application by motion of any creditor of the company, restrain further proceedings in any action, suit, or legal proceeding against any contributory of the company as well as against the company as hereinbefore provided, upon such terms as the Court thinks fit.

Order for winding-up company.

198. Where an order has been made for winding-up a company registered in pursuance of this part of the Act, in addition to the provisions hereinbefore contained, it is hereby further provided that no suit, action, or other legal proceeding shall be commenced or proceeded with against any contributory of the company in respect of any debt of the company, except with the leave of the Court, and subject to such terms as the Court may impose.

PART VIII.

APPLICATION OF ACT TO UNREGISTERED COMPANIES.

Winding-up of unregistered companies.

199. Subject as hereinafter mentioned, any partnership, association, or company, except railway companies incorporated by Act of Parliament, consisting of more than seven members, and not registered under this Act, and hereinafter included under the term unregistered company, may be wound up under this Act, and all the provisions of this Act with respect to winding-up shall apply to such company, with the following exceptions and additions:—

- (1.) An unregistered company shall, for the purpose of determining the Court having jurisdiction in the matter of the winding-up, be deemed to be registered in that part of the United Kingdom where its principal place of business is situate; or if it has a principal place of business situate in more than one part of the United Kingdom, then in each part of the United Kingdom where it has a principal place of business; moreover the principal place of business of an unregistered company, or (where it has a principal place of business situate in more than one part of the United Kingdom) such one of its principal places of business as is situate in that part of the United Kingdom in which proceedings are being instituted, shall for all the purposes of the winding-up of such company be deemed to be the registered office of the company :
- (2.) No unregistered company shall be wound up under this Act voluntarily or subject to the supervision of the Court :
- (3.) The circumstances under which an unregistered company may be wound up are as follows; (that is to say,)
 - (a.) Whenever the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs;
 - (b.) Whenever the company is unable to pay its debts;
 - (c.) Whenever the Court is of opinion that it is just and equitable that the company should be wound up :
- (4.) An unregistered company shall, for the purposes of this Act, be deemed to be unable to pay its debts,
 - (a.) Whenever a creditor to whom the company is indebted at law or

in equity, by assignment or otherwise, in a sum exceeding fifty pounds then due, has served on the company, by leaving the same at the principal place of business of the company, or by delivering to the secretary or some director or principal officer of the company, or by otherwise serving the same in such manner as the Court may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has for the space of three weeks succeeding the service of such demand neglected to pay such sum, or to secure or compound for the same to the satisfaction of the creditor:

- (b.) Whenever any action, suit, or other proceeding has been instituted against any member of the company for any debt or demand due, or claimed to be due, from the company, or from him in his character of member of the company, and notice in writing of the institution of such action, suit, or other legal proceeding having been served upon the company by leaving the same at the principal place of business of the company or by delivering it to the secretary, or some director, manager or principal officer of the company, or by otherwise serving the same in such manner as the Court may approve or direct, the company has not within ten days after service of such notice paid, secured, or compounded for such debt or demand, or procured such action, suit, or other legal proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against such action, suit, or other legal proceeding, and against all costs, damages, and expenses to be incurred by him by reason of the same:
- (c.) Whenever, in England or Ireland, execution or other process issued on a judgment, decree, or order obtained in any Court in favour of any creditor in any proceeding at law or in equity instituted by such creditor against the company, or any member thereof as such, or against any person authorized to be sued as nominal defendant on behalf of the company, is returned unsatisfied:
- (d.) Whenever, in the case of an unregistered company engaged in working mines within and subject to the jurisdiction of the Stannaries, a customary decree or order absolute for the sale of the machinery, materials, and effects of such mine has been made in a creditor's suit in the Court of the vice-warden:
- (e.) Whenever, in Scotland, the induciæ of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest, have expired without payment being made:
- (f.) Whenever it is otherwise proved to the satisfaction of the Court that the company is unable to pay its debts.

200. In the event of an unregistered company being wound up every person shall be deemed to be a contributory who is liable, at law or in equity, to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members amongst themselves, or to pay or contribute to the payment of the costs, charges, and expenses of winding-up the company, and every such contributory shall be liable to contribute to the assets of the company in the course of the winding-up all sums due from him in respect of any such liability as aforesaid; but in the event of the death, bankruptcy, or insolvency of any contributory, or marriage of any female contributory, the provisions hereinbefore contained with respect to the personal representatives, heirs, and devisees of a deceased contributory, and to the assignees of a bankrupt or insolvent contributory, and to the husband of married contributories, shall apply.

Who to be deemed a contributory in the event of company being wound up.

201. The Court may, at any time after the presentation of a petition for winding-up an unregistered company, and before making an order for winding-up the company, upon the application of any creditor of the company, restrain further proceedings in any action, suit, or proceeding against any contributory

Power of Court to restrain further proceedings.

of the company, or against the company as hereinbefore provided, upon such terms as the Court thinks fit.

Effect of
order for
winding-up
company.

202. Where an order has been made for winding-up an unregistered company in addition to the provisions hereinbefore contained in the case of companies formed under this Act, it is hereby further provided that no suit, action, or other legal proceeding shall be commenced or proceeded with against any contributory of the company in respect of any debt of the company, except with the leave of the Court, and subject to such terms as the Court may impose.

Provision in
case of un-
registered
company.

203. If any unregistered company has no power to sue and be sued in a common name, or if for any reason it appears expedient, the Court may by the order made for winding-up such company, or by any subsequent order, direct that all such property, real and personal, including all interest, claims, and rights into and out of property, real and personal, and including things in action as may belong to or be vested in the company, or to or in any person or persons on trust for or on behalf of the company or any part of such property, is to vest in the official liquidator or official liquidators by his or their official name or names, and thereupon the same or such part thereof as may be specified in the order shall vest accordingly, and the official liquidator or official liquidators may, in his or their official name or names, or in such name or names and after giving such indemnity as the Court directs, bring or defend any actions, suits, or other legal proceeding relating to any property vested in him or them, or any actions, suits, or other legal proceedings necessary to be brought or defended for the purposes of effectually winding up the company and recovering the property thereof.

Provisions
in this part
of Act
cumulative.

204. The provisions made by this part of the Act with respect to unregistered companies shall be deemed to be made in addition to and not in restriction of any provisions hereinbefore contained with respect to winding up companies by the Court, and the Court or official liquidator may, in addition to anything contained in this part of the Act, exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding up companies formed under this Act; but an unregistered company shall not, except in the event of its being wound up, be deemed to be a company under this Act, and then only to the extent provided by this part of this Act.

PART IX.

[Ss. 205–212 refer to the repeal of Acts and temporary provisions, and ss. 206 (in part), 207, 211, and 212 were repealed by the Statute Law Revision Act, 1875.]

[The first schedule contains (i.) a table (Table A) of regulations for management of a company limited by shares and a form of balance sheet for such a company; (ii.) a table (Table B) of fees to be paid to the Registrar of Joint Stock Companies by a company having a capital divided into shares; (iii.) a table (Table C) of fees to be paid to the Registrar of Joint Stock Companies by a company not having a capital divided into shares; and (iv.) a form (Form D) of statement referred to in Part iii. of the Act.]

[The second schedule contains (i.) a form (Form A) of memorandum of association of a company limited by shares; (ii.) a form (Form B) of memorandum and articles of association of a company limited by guarantee, and not having a capital divided into shares; (iii.) a form (Form C) of memorandum and articles of association of a company limited by guarantee, and having a capital divided into shares; (iv.) a form (Form D) of memorandum and articles of association of an unlimited company, having a capital divided into shares; (v.) a form (Form E) as required by the second part of the Act (see section 26); and (vi.) a form (Form F) of a license to hold lands.]

(The third schedule contains in Part i. a list of repealed Acts except those

mentioned in Part ii. thereof; and by Part ii. exempts from the operation of Part i. (a) 7 & 8 Vict. c. 113, s. 7, which gives to existing companies powers of suing and being sued, and (b) such part of 20 & 21 Vict. c. 49, s. 12, as gives power to form banking partnerships of ten persons.]

THE COMPANIES ACT, 1867.

[30 & 31 VICT. c. 131.]

Preliminary.

[1. Short Title.]

2. The Companies Act, 1862, is hereinafter referred to as "the Principal Act;" and the principal Act and this Act are hereinafter distinguished as and may be cited for all purposes as "The Companies Act, 1862 and 1867;" and this Act shall, so far as is consistent with the tenor thereof, be construed as one with the principal Act; and the expression "this Act" in the principal Act, and any expression referring to the principal Act which occurs in any Act or other document, shall be construed to mean the principal Act as amended by this Act.

Act to be construed as one with 25 & 26 Vict. c. 89.

[3. Commencement of Act.]

Unlimited Liability of Directors.

4. Where after the commencement of this Act a company is formed as a limited company under the principal Act, the liability of the directors or managers of such company, or the managing director, may, if so provided by the memorandum of association, be unlimited.

Company may have directors with unlimited liability.

5. The following modifications shall be made in the thirty-eighth section of the principal Act, with respect to the contributions to be required in the event of a winding-up of a limited company under the principal Act, from any director or manager whose liability is, in pursuance of this Act, unlimited:—

Liability of director, past and present, where liability is unlimited.

- (1.) Subject to the provisions hereinafter contained, any such director or manager, whether past or present, shall, in addition to his liability (if any) to contribute as an ordinary member, be liable to contribute as if he were at the date of the commencement of such winding-up a member of an unlimited company:
- (2.) No contribution required from any past director or manager who has ceased to hold such office for a period of one year or upwards prior to the commencement of the winding-up shall exceed the amount (if any) which he is liable to contribute as an ordinary member of the company:
- (3.) No contribution required from any past director or manager in respect of any debt or liability of the company contracted after the time at which he ceased to hold such office shall exceed the amount (if any) which he is liable to contribute as an ordinary member of the company:
- (4.) Subject to the provisions contained in the regulations of the company, no contribution required from any director or manager shall exceed the amount (if any) which he is liable to contribute as an ordinary member, unless the Court deems it necessary to require such contribution in order to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of the winding-up.

6. In the event of the winding-up of any limited company, the Court, if it think fit, may make to any director or manager of such company whose liability is unlimited the same allowance by way of set-off as under the one hundred and first section of the principal Act it may make to a contributory where the company is not limited.

Director with unlimited liability may have set-off as under s. 101 of 25 & 26 Vict. c. 89.

Notice to be given to director on his election that his liability will be unlimited.

7. In any limited company in which, in pursuance of this Act, the liability of a director or manager is unlimited, the directors or managers of the company (if any), and the member who proposes any person for election or appointment to such office, shall add to such proposal a statement that the liability of the person holding such office will be unlimited, and the promoters, directors, managers, and secretary (if any) of such company, or one of them, shall, before such person accepts such office or acts therein, give him notice in writing that his liability will be unlimited.

If any director, manager, or proposer, make default in adding such statement, or if any promoter, director, manager, or secretary make default in giving such notice, he shall be liable to a penalty not exceeding one hundred pounds, and shall also be liable for any damage which the person so elected or appointed may sustain from such default, but the liability of the person elected or appointed shall not be affected by such default.

Existing limited company may, by special resolution, make liability of directors unlimited.

8. Any limited company under the principal Act, whether formed before or after the commencement of this Act, may, by a special resolution if authorized so to do by its regulations, as originally framed or as altered by special resolution, from time to time modify the conditions contained in its memorandum of association so far as to render unlimited the liability of its directors or managers, or of the managing director; and such special resolution shall be of the same validity as if it had been originally contained in the memorandum of association, and a copy thereof shall be embodied in or annexed to every copy of the memorandum of association which is issued after the passing of the resolution, and any default in this respect shall be deemed to be a default in complying with the provisions of the fifty-fourth section of the principal Act, and shall be punished accordingly.

Reduction of Capital and Shares.

Power to company to reduce capital.

9. Any company limited by shares may, by special resolution, so far modify the conditions contained in its memorandum of association, if authorized so to do by its regulations as originally framed or as altered by special resolution, as to reduce its capital; but no such resolution for reducing the capital of any company shall come into operation until an order of the Court is registered by the registrar of joint stock companies, as is hereinafter mentioned.

Company to add "and reduced" to its name for a limited period.

10. The company shall, after the date of the passing of any special resolution for reducing its capital, add to its name, until such date as the Court may fix, the words "and reduced" as the last words in its name, and those words shall until such date be deemed to be part of the name of the company within the meaning of the principal Act.

Company to apply to the Court for an order confirming reduction.

11. A company which has passed a special resolution for reducing its capital may apply to the Court by petition for an order confirming the reduction, and on the hearing of the petition the Court, if satisfied that with respect to every creditor of the company who under the provisions of this Act is entitled to object to the reduction, either his consent to the reduction has been obtained, or his debt or claim has been discharged or has been determined, or has been secured as hereinafter provided, may make an order confirming the reduction on such terms and subject to such conditions as it deems fit.

Definition of the Court.

12. The expression "The Court" shall in this Act mean the Court which has jurisdiction to make an order for winding-up the petitioning company, and the eighty-first and eighty-third sections of the principal Act shall be construed as if the term "winding-up" in those sections included proceedings under this Act, and the Court may in any proceedings under this Act make such order as to costs as it deems fit.

Creditors may object to reduction, and list of objecting creditors to be settled by the Court.

13. Where a company proposes to reduce its capital, every creditor of the company who at the date fixed by the Court is entitled to any debt or claim which, if that date were the commencement of the winding-up of the company, would be admissible in proof against the company, shall be entitled to object to the proposed reduction, and to be entered in the list of creditors who are so entitled to object.

The Court shall settle a list of such creditors, and for that purpose shall ascertain as far as possible, without requiring an application from any

creditor, the names of such creditors and the nature and amount of their debts or claims, and may publish notices fixing a certain day or days within which creditors of the company who are not entered on the list are to claim to be so entered or to be excluded from the right of objecting to the proposed reduction.

14. Where a creditor whose name is entered on the list of creditors and whose debt or claim is not discharged or determined, does not consent to the proposed reduction, the Court may (if it think fit) dispense with such consent, on the company securing the payment of the debt or claim of such creditor by setting apart and appropriating, in such manner as the Court may direct, a sum of such amount as is hereinafter mentioned; (that is to say)—

Court may dispense with consent of creditor on security being given for his debt.

(1.) If the full amount of the debt or claim of the creditor is admitted by the company, or, though not admitted, is such as the company are willing to set apart and appropriate, then the full amount of the debt or claim shall be set apart and appropriated.

(2.) If the full amount of the debt or claim of the creditor is not admitted by the company, and is not such as the company are willing to set apart and appropriate, or if the amount is contingent or not ascertained, then the Court may, if it think fit, inquire into and adjudicate upon the validity of such debt or claim, and the amount for which the company may be liable in respect thereof, in the same manner as if the company were being wound up by the Court, and the amount fixed by the Court on such inquiry and adjudication shall be set apart and appropriated.

15. The registrar of joint stock companies, upon the production to him of an order of the Court confirming the reduction of the capital of a company, and the delivery to him of a copy of the order and of a minute (approved by the Court) showing with respect to the capital of the company, as altered by the order, the amount of such capital, the number of shares in which it is to be divided, and the amount of each share, shall register the order and minute, and on the registration the special resolution confirmed by the order so registered shall take effect.

Order and minute to be registered.

Notice of such registration shall be published in such manner as the Court may direct.

The registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requisitions of this Act with respect to the reduction of capital have been complied with, and that the capital of the company is such as is stated in the minute.

16. The minute when registered shall be deemed to be substituted for the corresponding part of the memorandum of association of the company, and shall be of the same validity and subject to the same alterations as if it had been originally contained in the memorandum of association; and subject as in this Act mentioned, no member of the company, whether past or present, shall be liable in respect of any share to any call or contribution exceeding in amount the difference (if any) between the amount which has been paid on such share and the amount of the share as fixed by the minute.

Minute to form part of memorandum of association.

17. If any creditor who is entitled in respect of any debt or claim to object to the reduction of the capital of a company under this Act is, in consequence of his ignorance of the proceedings taken with a view to such reduction, or of their nature and effect with respect to his claim, not entered on the list of creditors, and after such reduction the company is unable, within the meaning of the eightieth section of the principal Act, to pay to the creditor the amount of such debt or claim, every person who was a member of the company at the date of the registration of the order and minute relating to the reduction of the capital of the company shall be liable to contribute for the payment of such debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day prior to such registration; and on the company being wound up the Court, on the application of such creditor, and on proof that he was ignorant

Saving of rights of creditors who are ignorant of proceedings.

of the proceedings taken with a view to the reduction, or of their nature and effect with respect to his claim, may, if it think fit, settle a list of such contributories accordingly, and make and enforce calls and orders on the contributories settled on such list in the same manner in all respects as if they were ordinary contributories in a winding-up; but the provisions of this section shall not affect the rights of the contributories of the company among themselves.

Copy of registered minute.

18. A minute when registered shall be embodied in every copy of the memorandum of association issued after its registration; and if any company makes default in complying with the provisions of this section it shall incur a penalty not exceeding one pound for each copy in respect of which such default is made, and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty.

Penalty on concealment of name of creditor.

19. If any director, manager, or officer of the company wilfully conceals the name of any creditor of the company who is entitled to object to the proposed reduction, or wilfully misrepresents the nature or amount of the debt or claim of any creditor of the company, or if any director or manager of the company aids or abets in or is privy to any such concealment or misrepresentation as aforesaid, every such director, manager, or officer shall be guilty of a misdemeanor.

Power to make rules extended to making rules concerning matters in this Act.

20. The powers of making rules concerning winding-up conferred by the *One hundred and seventieth*, one hundred and seventy-first, one hundred and seventy-second, and one hundred and seventy-third sections of the principal Act shall respectively extend to making rules concerning matters in which jurisdiction is by this Act given to the Court which has the power of making an order to wind up a company, and until such rules are made the practice of the Court in matters of the same nature shall, so far as the same is applicable, be followed.

[The words in italics were repealed by the Statute Law Revision Act, 1881.]

Subdivision of Shares.

Shares may be divided into shares of smaller amount.

21. Any company limited by shares may by special resolution so far modify the conditions contained in its memorandum of association, if authorized so to do by its regulations as originally framed, or as altered by special resolution, as by subdivision of its existing shares or any of them, to divide its capital, or any part thereof, into shares of smaller amount than is fixed by its memorandum of association.

Provided, that in the subdivision of the existing shares the proportion between the amount which is paid and the amount (if any) which is unpaid on each share of reduced amount shall be the same as it was in the case of the existing share or shares from which the share of reduced amount is derived.

Special resolution to be embodied in memorandum of association.

22. The statement of the number and amount of the shares into which the capital of the company is divided, contained in every copy of the memorandum of association issued after the passing of any such special resolution, shall be in accordance with such resolution; and any company which makes default in complying with the provisions of this section shall incur a penalty not exceeding one pound for each copy in respect of which such default is made, and every director and manager of the company who knowingly or wilfully authorizes or permits such default shall incur the like penalty.

Associations not for Profit.

Special provisions as to associations formed for purposes not of gain.

23. Where any association is about to be formed under the principal Act as a limited company, if it proves to the Board of Trade that it is formed for the purpose of promoting commerce, art, science, religion, charity, or any other useful object, and that it is the intention of such association to apply the profits, if any, or other income of the association in promoting its objects, and to prohibit the payment of any dividend to the members of the association, the Board of Trade may, by licence under the hand of one of the secretaries or assistant secretaries, direct such association to be registered with limited liability, without the addition of the word limited to its name, and such

association may be registered accordingly, and upon registration shall enjoy all the privileges and be subject to the obligations by this Act imposed on limited companies, with the exceptions that none of the provisions of this Act that require a limited company to use the word limited as any part of its name, or to publish its name, or to send a list of its members, directors, or managers to the registrar, shall apply to an association so registered.

The licence by the Board of Trade may be granted upon such conditions and subject to such regulations as the board think fit to impose, and such conditions and regulations shall be binding on the association, and may, at the option of the said board, be inserted in the memorandum and articles of association, or in both or one of such documents.

Calls upon Shares.

24. Nothing contained in the principal Act shall be deemed to prevent any company under that Act, if authorized by its regulations as originally framed or as altered by special resolution, from doing any one or more of the following things; namely,—

Company may have some shares fully paid and others not.

- (1.) Making arrangements on the issue of shares for a difference between the holders of such shares in the amount of calls to be paid, and in the time of payment of such calls:
- (2.) Accepting from any member of the company who assents thereto the whole or part of the amount remaining unpaid on any share or shares held by him, either in discharge of the amount of a call payable in respect of any other share or shares held by him or without any call having been made:
- (3.) Paying dividend in proportion to the amount paid up on each share in cases where a larger amount is paid up on some shares than on others.

25. Every share in any company shall be deemed and taken to have been issued and to be held subject to the payment of the whole amount thereof in cash, unless the same shall have been otherwise determined by a contract duly made in writing, and filed with the registrar of joint stock companies at or before the issue of such shares.

Manner in which shares are to be issued and held.

Transfer of Shares.

26. A company shall, on the application of the transferor of any share or interest in the company, enter in its register of members the name of the transferee of such share or interest, in the same manner and subject to the same conditions as if the application for such entry were made by the transferee.

Transfer may be registered at request of transferor.

Share Warrants to Bearer.

27. In the case of a company limited by shares, the company, if authorized so to do by its regulations as originally framed, or as altered by special resolution, and subject to the provisions of such regulations, may, with respect to any share which is fully paid up, or with respect to stock, issue under their common seal a warrant stating that the bearer of the warrant is entitled to the share or shares or stock therein specified, and may provide, by coupons or otherwise, for the payment of the future dividends on the share or shares or stock included in such warrant, hereinafter referred to as a share warrant.

Warrant of limited shares fully paid up may be issued in name of bearer.

28. A share warrant shall entitle the bearer of such warrant to the shares or stock specified in it, and such shares or stock may be transferred by the delivery of the share warrant.

Effect of share warrant.

29. The bearer of a share warrant shall, subject to the regulations of the company, be entitled, on surrendering such warrant for cancellation, to have his name entered as a member in the register of members, and the company shall be responsible for any loss incurred by any person by reason of the company entering in its register of members the name of any bearer of a share warrant in respect of the shares or stock specified therein without the share warrant being surrendered and cancelled.

Re-registration of bearer of a share warrant in the register.

30. The bearer of a share warrant may, if the regulations of the company

Regulations

of the company may make the bearer of a share warrant a member.

Entries in register where share warrant issued.

Particulars to be contained in annual summary.

Stamps on share warrants.

Contracts, how made.

Prospectus, &c., to specify dates

so provide, be deemed to be a member of the company within the meaning of the principal Act, either to the full extent or for such purposes as may be prescribed by the regulations:

Provided that the bearer of a share warrant shall not be qualified in respect of the shares or stock specified in such warrant for being a director or manager of the company in cases where such a qualification is prescribed by the regulations of the company.

31. On the issue of a share warrant in respect of any share or stock, the company shall strike out of its register of members the name of the member then entered therein as holding such share or stock as if he had ceased to be a member, and shall enter in the register the following particulars:

(1.) The fact of the issue of the warrant:—

(2.) A statement of the shares or stock included in the warrant, distinguishing each share by its number:

(3.) The date of the issue of the warrant:

And until the warrant is surrendered the above particulars shall be deemed to be the particulars which are required by the twenty-fifth section of the principal Act to be entered in the register of members of a company; and on the surrender of a warrant the date of such surrender shall be entered as if it were the date at which a person ceased to be a member.

32. After the issue by the company of a share warrant the annual summary required by the twenty-sixth section of the principal Act shall contain the following particulars—the total amount of shares or stock for which share warrants are outstanding at the date of the summary, and the total amount of share warrants which have been issued and surrendered respectively since the last summary was made, and the number of shares or amount of stock comprised in each warrant.

33. There shall be charged on every share warrant a stamp duty of an amount equal to three times the amount of the *ad valorem* stamp duty which would be chargeable on a deed transferring the share or shares or stock specified in the warrant, if the consideration for the transfer were the nominal value of such share or shares or stock.

[34. Penalties on persons committing forgery.]

[35. Penalties on persons falsely personating owner of shares.]

[36. Penalties on persons engraving plates, etc.]

Contracts.

37. Contracts on behalf of any company under the principal Act may be made as follows; (that is to say,)

(1.) Any contract which if made between private persons would be by law required to be in writing, and if made according to English law to be under seal, may be made on behalf of the company in writing under the common seal of the company, and such contract may be in the same manner varied or discharged:

(2.) Any contract which if made between private persons would be by law required to be in writing, and signed by the parties to be charged therewith, may be made on behalf of the company in writing signed by any person acting under the express or implied authority of the company, and such contract may in the same manner be varied or discharged:

(3.) Any contract which if made between private persons would by law be valid although made by parol only, and not reduced into writing, may be made by parol on behalf of the company by any person acting under the express or implied authority of the company, and such contract may in the same way be varied or discharged:

And all contracts made according to the provisions herein contained shall be effectual in law, and shall be binding upon the company, and their successors and all other parties thereto, their heirs, executors, or administrators, as the case may be.

38. Every prospectus of a company, and every notice inviting persons to subscribe for shares in any joint stock company, shall specify the dates and the names of the parties to any contract entered into by the company, or the

promoters, directors, or trustees thereof, before the issue of such prospectus or notice, whether subject to adoption by the directors or the company, or otherwise; and any prospectus or notice not specifying the same shall be deemed fraudulent on the part of the promoters, directors, and officers of the company knowingly issuing the same, as regards any person taking shares in the company on the faith of such prospectus, unless he shall have had notice of such contract.

and names of parties to any contract made prior to issue of such prospectus, &c.

Meetings.

39. Every company formed under the principal Act after the commencement of this Act shall hold a general meeting within four months after its memorandum of association is registered; and if such meeting is not held the company shall be liable to a penalty not exceeding five pounds a day for every day after the expiration of such four months until the meeting is held; and every director or manager of the company, and every subscriber of the memorandum of association, who knowingly authorizes or permits such default, shall be liable to the same penalty.

Company to hold meeting within four months after registration.

Winding-up.

40. No contributory of a company under the principal Act shall be capable of presenting a petition for winding-up such company unless the members of the company are reduced in number to less than seven, or unless the shares in respect of which he is a contributory, or some of them, either were originally allotted to him or have been held by him, and registered in his name, for a period of at least six months during the eighteen months previously to the commencement of the winding-up, or have devolved upon him through the death of a former holder;

Contributory when not qualified to present winding-up petition.

Provided that where a share has during the whole or any part of the six months been held by or registered in the name of the wife of a contributory either before or after her marriage, or by or in the name of any trustee or trustees for such wife or for the contributory, such share shall for the purposes of this section be deemed to have been held by and registered in the name of the contributory.

[41-46. These sections are now repealed by 53 & 54 Vict. c. 63, s. 33.]

Saving.

47. Nothing in this Act contained shall exempt any company from the second or third provisions of the one hundred and ninety-sixth section of the principal Act, restraining the alteration of any provision in any Act of Parliament or charter.

Not to exempt companies from provisions of s. 196 of 25 & 26 Vict. c. 89.

THE JOINT STOCK COMPANIES ARRANGEMENT ACT, 1870.

33 & 34 VICT. c. 104.

2. Where any compromise or arrangement shall be proposed between a company which is, at the time of the passing of this Act or afterwards, in the course of being wound up, either voluntarily or by or under the supervision of the Court, under the Companies Acts, 1862 and 1867, or either of them, and the creditors of such company, or any class of such creditors, it shall be lawful for the Court, in addition to any other of its powers, on the application in a summary way of any creditor or the liquidator, to order that a meeting of such creditors or class of creditors shall be summoned in such manner as the Court shall direct, and if a majority in number representing three-fourths in value of such creditors or class of creditors present either in person or by proxy at such meeting shall agree to any arrangement or compromise, such arrangement or compromise shall, if sanctioned by an order of the

Where compromise proposed, Court of Chancery may order a meeting of creditors, &c., to decide as to such compromise.

Interpretation.

Act and Companies Act to be read together.

Court, be binding on all such creditors or class of creditors, as the case may be, and also on the liquidator and contributories of the said company.

3. The word "company" in this Act shall mean any company liable to be wound up under "The Companies Act, 1862."

4. This Act shall be read and construed as part of "The Companies Act, 1862."

THE COMPANIES ACT, 1877.

40 & 41 VICT. c. 26.

[1. Short title.]

Construction of "Capital" and powers to reduce capital contained in 30 & 31 Vict. c. 131.

[2. Construction of Acts. 25 & 26 Vict. c. 89; 30 & 31 Vict. c. 131.]

3. The word "Capital" as used in the Companies Act, 1867, shall include paid-up capital: and the power to reduce capital conferred by that Act shall include a power to cancel any lost capital, or any capital unrepresented by available assets, or to pay off any capital which may be in excess of the wants of the company; and paid-up capital may be reduced either with or without extinguishing or reducing the liability (if any) remaining on the shares of the company, and to the extent to which such liability is not extinguished or reduced it shall be deemed to be preserved, notwithstanding anything contained in the Companies Act, 1867.

Application of provisions of 30 & 31 Vict. c. 131.

4. The provisions of the Companies Act, 1867, as amended by this Act, shall apply to any company reducing its capital in pursuance of this Act and of the Companies Act, 1867, as amended by this Act:

Provided that where the reduction of the capital of a company does not involve either the diminution of any liability in respect of unpaid capital or the payment to any shareholder of any paid-up capital—

(1.) The creditors of the company shall not, unless the Court otherwise direct, be entitled to object or required to consent to the reduction; and

(2.) It shall not be necessary before the presentation of the petition for confirming the reduction to add, and the Court may, if it thinks it expedient so to do, dispense altogether with the addition of the words "and reduced," as mentioned in the Companies Act, 1867.

30 & 31 Vict. c. 131.

In any case that the Court thinks fit so to do, it may require the company to publish in such manner as it thinks fit the reasons for the reduction of its capital or such other information in regard to the reduction of its capital as the Court may think expedient with a view to give proper information to the public in relation to the reduction of its capital by a company, and, if the Court thinks fit, the causes which led to such reduction.

The minute required to be registered in the case of reduction of capital shall show, in addition to the other particulars required by law, the amount (if any) at the date of the registration of the minute proposed to be deemed to have been paid up on each share.

Power to reduce capital by the cancellation of unissued shares.

5. Any company limited by shares may so far modify the conditions contained in its memorandum of association, if authorized so to do by its regulations as originally framed or as altered by special resolution, as to reduce its capital by cancelling any shares which, at the date of the passing of such resolution, have not been taken or agreed to be taken by any person: and the provisions of "The Companies Act, 1867," shall not apply to any reduction of capital made in pursuance of this section.

Reception of certified copies of documents as legal evidence.

6. And whereas it is expedient to make provision for the reception as legal evidence of certificates of incorporation other than the original certificates, and of certified copies of or extracts from any documents filed and registered under the Companies Acts, 1862 to 1877: Be it enacted, that any certificate of the incorporation of any company given by the registrar or by any assistant registrar for the time being shall be received in evidence as if it were the original certificate; and any copy of or extract from any of the documents or part of the documents kept and registered at any of the offices for the

registration of joint stock companies in England, Scotland, or Ireland, if duly certified to be a true copy under the hand of the registrar or one of the assistant registrars for the time being, and whom it shall not be necessary to prove to be the registrar or assistant registrar, shall, in all legal proceedings, civil or criminal, and in all cases whatsoever, be received in evidence as of equal validity with the original document.

THE COMPANIES ACT, 1879.

42 & 43 VICT. c. 76.

[1. Short title.]

2. This Act shall not apply to the Bank of England.

[3. Act to be construed with 25 & 26 Vict. c. 89, 30 & 31 Vict. c. 131, and 40 & 41 Vict. c. 26.]

4. Subject as in this Act mentioned, any company registered before or after the passing of this Act as an unlimited company may register under the Companies Act, 1862 to 1879, as a limited company, or any company already registered as a limited company may re-register under the provisions of this Act.

Act not to apply to Bank of England.

Registration anew of company.

The registration of an unlimited company as a limited company in pursuance of this Act shall not affect or prejudice any debts, liabilities, obligations, or contracts incurred or entered into by, to, with, or on behalf of such company prior to registration, and such debts, liabilities, contracts, and obligations may be enforced in manner provided by Part VII. of the Companies Act, 1862, in the case of a company registering in pursuance of that part.

5. An unlimited company may, by the resolution passed by the members when assenting to registration as a limited company under the Companies Acts, 1862 to 1879, and for the purpose of such registration or otherwise, increase the nominal amount of its capital by increasing the nominal amount of each of its shares.

Reserve capital of company, how provided.

Provided always, that no part of such increased capital shall be capable of being called up, except in the event of and for the purposes of the company being wound up.

And, in cases where no such increase of nominal capital may be resolved upon, an unlimited company may, by such resolution as aforesaid, provide that a portion of its uncalled capital shall not be capable of being called up, except in the event of and for the purposes of the company being wound up.

A limited company may by a special resolution declare that any portion of its capital which has not been already called up shall not be capable of being called up, except in the event of and for the purpose of the company being wound up; and thereupon such portion of capital shall not be capable of being called up, except in the event of and for the purposes of the company being wound up.

6. Section one hundred and eighty-two of the Companies Act, 1862, is hereby repealed, and in place thereof it is enacted as follows:—A bank of issue registered as a limited company, either before or after the passing of this Act, shall not be entitled to limited liability in respect of its notes; and the members thereof shall continue liable in respect of its notes in the same manner as if it had been registered as an unlimited company; but in case the general assets of the company are, in the event of the company being wound up, insufficient to satisfy the claims of both the note-holders and the general creditors, then the members, after satisfying the remaining demands of the note-holders, shall be liable to contribute towards payment of the debts of the general creditors a sum equal to the amount received by the note-holders out of the general assets of the company.

25 & 26 Vict. c. 89, s. 182, repealed, and liability of bank of issue unlimited in respect of notes.

For the purposes of this section the expression "the general assets of the company" means the funds available for payment of the general creditor as well as the note-holder.

It shall be lawful for any bank of issue registered as a limited company

to make a statement on its notes to the effect that the limited liability does not extend to its notes, and that the members of the company continue liable in respect of its notes in the same manner as if it had been registered as an unlimited company.

Audit of
accounts of
banking
companies.

7. (1.) Once at the least in every year the accounts of every banking company registered after the passing of this Act as a limited company shall be examined by an auditor or auditors, who shall be elected annually by the company in general meeting.

(2.) A director or officer of the company shall not be capable of being elected auditor of such company.

(3.) An auditor on quitting office shall be re-eligible.

(4.) If any casual vacancy occurs in the office of any auditor the surviving auditor or auditors (if any) may act, but if there is no surviving auditor the directors shall forthwith call an extraordinary general meeting for the purpose of supplying the vacancy or vacancies in the auditorship.

(5.) Every auditor shall have a list delivered to him of all books kept by the company, and shall at all reasonable times have access to the books and accounts of the company; and any auditor may, in relation to such books and accounts, examine the directors or any other officer of the company; provided that, if a banking company has branch banks beyond the limits of Europe, it shall be sufficient if the auditor is allowed access to such copies of and extracts from the books and accounts of any such branch as may have been transmitted to the head office of the banking company in the United Kingdom.

(6.) The auditor or auditors shall make a report to the members on the accounts examined by him or them, and on every balance sheet laid before the company in general meeting during his or their tenure of office, and in every such report shall state whether, in his or their opinion, the balance sheet referred to in the report is a full and fair balance sheet properly drawn up, so as to exhibit a true and correct view of the state of the company's affairs, as shown by the books of the company; and such report shall be read before the company in general meeting.

(7.) The remuneration of the auditor or auditors shall be fixed by the general meeting appointing such auditor or auditors, and shall be paid by the company.

Signature
of balance
sheet.

8. Every balance sheet submitted to the annual or other meeting of the members of every banking company registered after the passing of this Act as a limited company shall be signed by the auditor or auditors, and by the secretary or manager (if any), and by the directors of the company, or three of such directors at the least.

Application
of 25 & 26
Vict. c. 89.
30 & 31 Vict.
c. 131, and
40 & 41 Vict.
c. 26.
25 & 26 Vict.
c. 89.
30 & 31 Vict.
c. 131.
40 & 41 Vict.
c. 26, and
42 & 43 Vict.
c. 76.

9. On the registration, in pursuance of this Act, of a company which has been already registered, the registrar shall make provision for closing the former registration of the company, and may dispense with the delivery to him of copies of any documents with copies of which he was furnished on the occasion of the original registration of the company; but, save as aforesaid, the registration of such a company shall take place in the same manner and have the same effect as if it were the first registration of that company under the Companies Acts, 1862 to 1879, and as if the provisions of the Acts under which the company was previously registered and regulated had been contained in different Acts of Parliament from those under which the company is registered as a limited company.

Privileges
of Act
available
notwith-
standing
constitution
of company.

10. A company authorized to register under this Act may register thereunder and avail itself of the privileges conferred by this Act, notwithstanding any provisions contained in any Act of Parliament, royal charter, deed of settlement, contract of copartnership, cost-book regulations, letters patent, or other instrument constituting or regulating the company.

THE COMPANIES ACT, 1880.

43 VICT. c. 19.

[1. Short title.]

[2. Construction of Acts. 25 & 26 Vict. c. 89, 30 & 31 Vict. c. 131, 40 & 41 Vict. c. 26, 42 & 43 Vict. c. 76.]

3. When any company has accumulated a sum of undivided profits, which with the consent of the shareholders may be distributed among the shareholders in the form of a dividend or bonus, it shall be lawful for the company, by special resolution, to return the same, or any part thereof, to the shareholders, in reduction of the paid-up capital of the company, the unpaid capital being thereby increased by a similar amount. The powers vested in the directors of making calls upon the shareholders in respect of moneys unpaid upon their shares shall extend to the amount of the unpaid capital as augmented by such reduction.

Accumulated profits may be returned to shareholders in reduction of paid-up capital.

4. No such special resolution as aforesaid shall take effect until a memorandum, showing the particulars required by law in the case of a reduction of capital by order of the Court, shall have been produced to and registered by the Registrar of Joint Stock Companies.

No resolution to take effect till particulars have been registered.

5. Upon any reduction of paid-up capital made in pursuance of this Act, it shall be lawful for any shareholder, or for any one or more of several joint shareholders, within one month after the passing of the special resolution for such reduction to require the company to retain, and the company shall retain accordingly, the whole of the moneys actually paid upon the shares held by such person, either alone or jointly with any other person or persons, and which, in consequence of such reduction, would otherwise be returned to him or them, and thereupon the shares in respect of which the said moneys shall be so retained shall, in regard to the payment of dividends thereon, be deemed to be paid up to the same extent only as the shares on which payment as aforesaid has been accepted by the shareholders in reduction of their paid-up capital, and the company shall invest and keep invested the moneys so retained in such securities authorized for investment by trustees as the company shall determine, and upon the money so invested, or upon so much thereof as from time to time exceeds the amount of calls subsequently made upon the shares in respect of which such moneys shall have been retained, the company shall pay such interest as shall be received by them from time to time on such securities, and the amount so retained and invested shall be held to represent the future calls which may be made to replace the capital so reduced on those shares, whether the amount obtained on sale of the whole or such proportion thereof as represents the amount of any call when made produces more or less than the amount of such call.

Power to any shareholder within one month after passing of resolution to require company to retain moneys paid upon shares held by such person.

6. From and after such reduction of capital the company shall specify in the annual lists of members, to be made by them in pursuance of the twenty-sixth section of the Companies Act, 1862, the amounts which any of the shareholders of the company shall have required the company to retain, and the company shall have retained accordingly in pursuance of the fifth section of this Act, and the company shall also specify in the statements of account laid before any general meeting of the company the amount of the undivided profits of the company which shall have been returned to the shareholders in reduction of the paid-up capital of the company under this Act.

Company to specify amounts which shareholders have required them to retain under s. 5; also to specify amounts of profits returned to shareholders. 25 & 26 Vict. c. 89.

7.—(1.) Where the Registrar of Joint Stock Companies has reasonable cause to believe that a company, whether registered before or after the passing of this Act, is not carrying on business or in operation, he shall send to the company by post a letter inquiring whether the company is carrying on business or in operation.

Power of Registrar to strike names of defunct companies off register.

(2.) If the registrar does not, within one month of sending the letter, receive any answer thereto, he shall, within fourteen days after the expiration of the month, send to the company by post a registered letter referring to the first letter, and stating that no answer thereto has been received by the registrar, and that if an answer is not received to the second letter within one month

from the date thereof, a notice will be published in the *Gazette* with a view to striking the name of the company off the register.

(3.) If the registrar either receives an answer from the company to the effect that it is not carrying on business or in operation, or does not within one month after sending the second letter receive any answer thereto, the registrar may publish in the *Gazette* and send to the company a notice that at the expiration of three months from the date of that notice the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(4.) At the expiration of the time mentioned in the notice the registrar may, unless cause to the contrary is previously shown by such company, strike the name of such company off the register, and shall publish notice thereof in the *Gazette*, and on the publication in the *Gazette* of such last-mentioned notice the company whose name is so struck off shall be dissolved: Provided that the liability (if any) of every director, managing officer, and member of the company shall continue and may be enforced as if the company had not been dissolved.

(5.) If any company or member thereof feels aggrieved by the name of such company having been struck off the register in pursuance of this section, the company or member may apply to the superior Court in which the company is liable to be wound up; and such Court, if satisfied that the company was at the time of the striking off carrying on business or in operation, and that it is just so to do, may order the name of the company to be restored to the register, and thereupon the company shall be deemed to have continued in existence as if the name thereof had never been struck off; and the Court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had never been struck off.

(6.) A letter or notice authorized or required for the purposes of this section to be sent to a company may be sent by post addressed to the company at its registered office, or, if no office has been registered, addressed to the care of some director or officer of the company, or, if there be no director or officer of the company whose name and address are known to the registrar, the letter or notice (in identical form) may be sent to each of the persons who subscribed the memorandum of association, addressed to him at the address mentioned in that memorandum.

(7.) In the execution of his duties under this section the registrar shall conform to any regulations which may be from time to time made by the Board of Trade.

(8.) In this section the *Gazette* means, as respects companies whose registered office is in England, the *London Gazette*; as respects companies whose registered office is in Scotland, the *Edinburgh Gazette*; and, as respects companies whose registered office is in Ireland, the *Dublin Gazette*.

THE COMPANIES ACT, 1883 (a).

THE COMPANIES (COLONIAL REGISTERS) ACT, 1883.

46 & 47 VICT. c. 30.

[1. Short title and construction.]

Definitions.

2. In this Act the term "Company" means a company registered under the Companies Act, 1862, and having a capital divided into shares; the term "Shares" includes stock; the term "Colony" does not include any place within the United Kingdom, the Isle of Man, or the Channel Islands, but

(a) Repealed by 51 & 52 Vict. c. 62, *post*.

includes such territories as may for the time being be vested in Her Majesty by virtue of an Act of Parliament for the government of India, and any plantation, territory, or settlement situate elsewhere within Her Majesty's dominions.

3.—(1.) Any company whose objects comprise the transaction of business in a colony may, if authorized so to do by its regulations as originally framed or as altered by special resolution, cause to be kept in any colony in which it transacts business a branch register or registers of members resident in such colony.

Power for
companies
to keep
colonial
registers.

(2.) The company shall give to the Registrar of Joint Stock Companies notice of the situation of the office where any such branch register (in this Act called a colonial register) is kept, and of any change therein, and of the discontinuance of any such office in the event of the same being discontinued.

(3.) A colonial register shall, as regards the particulars entered therein, be deemed to be a part of the company's register of members, and shall be *prima facie* evidence of all particulars entered therein. Any such register shall be kept in the manner provided by the Companies Acts, 1862 to 1880, with this qualification, that the advertisement mentioned in section thirty-three of the Companies Act, 1862, shall be inserted in some newspaper circulating in the district wherein the register to be closed is kept, and that any competent Court in the colony where such register is kept shall be entitled to exercise the same jurisdiction of rectifying the same as is by section thirty-five of the Companies Act, 1862, vested, as respects a register, in England and Ireland in Her Majesty's Superior Courts of Law or Equity, and that all offences under section thirty-two of the Companies Act, 1862, may, as regards a colonial register, be prosecuted summarily before any tribunal in the colony where such register is kept having summary criminal jurisdiction.

25 & 26 Viet.
c. 89.

(4.) The company shall transmit to its registered office a copy of every entry in its colonial register or registers as soon as may be after such entry is made, and the company shall cause to be kept at its registered office, duly entered up from time to time, a duplicate or duplicates of its colonial register or registers. The provisions of section thirty-two of the Companies Act, 1862, shall apply to every such duplicate, and every such duplicate shall, for all the purposes of the Companies Acts, 1862 to 1880, be deemed to be part of the register of members of the company.

(5.) Subject to the provisions of this Act with respect to the duplicate register, the shares registered in a colonial register shall be distinguished from the shares registered in the principal register, and no transaction with respect to any shares registered in a colonial register shall, during the continuance of the registration of such shares in such colonial register, be registered in any other register.

(6.) The company may discontinue to keep any colonial register, and thereupon all entries in that register shall be transferred to some other colonial register kept by the company in the same colony, or to the register of members kept at the registered office of the company.

(7.) In relation to stamp duties the following provisions shall have effect:—

(a.) An instrument of transfer of a share registered in a colonial register under this Act shall be deemed to be a transfer of property situated out of the United Kingdom, and unless executed in any part of the United Kingdom shall be exempt from British stamp-duty.

(b.) Upon the death of a member registered in a colonial register under this Act, the share or other interest of the deceased member shall for the purposes of this Act, so far as relates to British duties, be deemed to be part of his estate and effects situated in the United Kingdom for or in respect of which probate or letters of administration is or are to be granted, or whereof an inventory is to be exhibited and recorded in like manner as if he were registered in the register of members kept at the registered office of the company.

(8.) Subject to the provisions of this Act, any company may, by its regulations as originally framed, or as altered by special resolution, make such provisions as it may think fit respecting the keeping of colonial registers.

THE COMPANIES ACT, 1886.

49 VICT. c. 23 (a).

[1. Short title.]

[2. Construction of Acts. 25 & 26 Vict. c. 89, 30 & 31 Vict. c. 131, 40 & 41 Vict. c. 26, 42 & 43 Vict. c. 76, 43 Vict. c. 19, 46 & 47 Vict. c. 28, 33 & 34 Vict. c. 104.]

Effect of
diligence
within sixty
days of
winding-up
by or subject
to super-
vision of
Court.

3. In the winding-up, by or subject to the supervision of the Court, of any company under the Companies Acts, 1862 to 1886, whose registered office is in Scotland, where the winding-up shall commence after the passing of this Act, the following provisions shall have effect:—

- (1.) Such winding-up shall, in the case of a winding-up by the Court as at the commencement thereof, and in the case of a winding-up subject to the supervision of the Court as at the date of the presentation of the petition, on which a supervision order is afterwards pronounced, be equivalent to an arrestment in execution and decree of forthcoming, and to an executed or completed poinding; and no arrestment or poinding of the funds or effects of the company, executed on or after the sixtieth day prior to the commencement of the winding-up by the Court, or to the presentation of the petition on which a supervision order is made, as the case may be, shall be effectual; and such funds or effects, or the proceeds of such effects, if sold, shall be made forthcoming to the liquidator: Provided that any arrester or pointer, before the date of such winding-up, or of such petition, as the case may be, who shall be thus deprived of the benefit of his diligence, shall have preference out of such funds or effects for the expense *bond fide* incurred by him in such diligence.
- (2.) Such winding-up shall, as at the respective dates aforesaid, be equivalent to a decree of adjudication of the heritable estates of the company for payment of the whole debts of the company, principal and interest, accumulated at the said dates respectively, subject always to such preferable heritable rights and securities as existed at the said dates and are valid and unchallengeable, and the right to poind the ground hereinafter provided.
- (3.) The provisions of sections one hundred and twelve to one hundred and seventeen inclusive, and also of section one hundred and twenty, of the Bankruptcy (Scotland) Act, 1856, shall, so far as consistent with the tenor of the recited Acts, apply to the realization of heritable estates affected by such heritable rights and securities as aforesaid; and for the purposes of this Act the words "Sequestration" and "Trustee" occurring in said sections of the Bankruptcy (Scotland) Act, 1856, shall mean respectively "liquidation" and "liquidator;" and the expression "the Lord Ordinary or the Court" shall mean "Court" as defined by this Act.
- (4.) No poinding of the ground which has not been carried into execution by sale of the effects sixty days before the respective dates aforesaid shall, except to the extent hereinafter provided, be available in any question with the liquidator: Provided that no creditor who holds a security over the heritable estate preferable to the right of the liquidator shall be prevented from executing a poinding of the ground after the respective dates aforesaid, but such poinding shall in competition with the liquidator be available only for the interest on the debt for the current half-yearly term, and for the arrears of interest for one year immediately before the commencement of such term.

19 & 20 Vict.
c. 79.

Ranking of
claims.

4. In the winding-up of any company under the Companies Acts, 1862 to 1886, whose registered office is in Scotland, and where the winding-up shall

(a) This Act relates only to companies in Scotland.

commence after the passing of this Act, the general and special rules in regard to voting and ranking for payment of dividends, provided by the Bankruptcy (Scotland) Act, 1856, sections forty-nine to sixty-six inclusive, or any other rules in regard thereto which may be in force for the time being in the sequestration of the estates of bankrupts in Scotland, shall, so far as consistent with the tenor of the said recited Acts, apply to creditors of such companies voting in matters relating to the winding-up, and ranking for payment of dividends and for this purpose sequestration shall be taken to mean liquidation, trustee to mean liquidator, and sheriff to mean the Court.

5. Wherever the expression "the Court of Session" occurs in the said recited Acts, or the expression "the Court" occurring therein or in this Act refers to the Court of Session in Scotland, it shall mean and include either division thereof, or, in the event of a remit to a permanent Lord Ordinary, as hereinafter provided, such Lord Ordinary, during session, and in time of vacation the Lord Ordinary on the bills; and, in regard to orders or judgments pronounced by the said Lord Ordinary on the bills in vacation, the following provisions shall have effect:—

Jurisdiction
of the Lord
Ordinary on
the Bills in
vacation.

(1.) No order or judgment pronounced by the said Lord Ordinary in vacation, under or by virtue, in whole or in part, of the following sections of the said recited Acts, shall be subject to review, reduction, suspension, or stay of execution, *videlicet*, of the Companies Act, 1862, sections ninety-one, one hundred and seven, one hundred and fifteen, one hundred and seventeen, and one hundred and twenty-seven, and section one hundred and forty-nine so far as it authorizes the Court to direct meetings of creditors or contributories to be held, and that portion of section two of the Joint Stock Companies Arrangement Act, 1870, which authorizes the Court to order that a meeting of creditors or class of creditors shall be summoned; and also sections one hundred and twenty-two and one hundred and twenty-three of the Companies Act, 1862, so far as they may affect the sections above enumerated.

(2.) All other orders or judgments pronounced by the said Lord Ordinary in vacation (except as after mentioned) shall be subject to review only by reclaiming note, in common form, presented (notwithstanding the terms of section one hundred and twenty-four of the Companies Act, 1862) within fourteen days from the date of such order or judgment: Provided always, that such orders or judgments pronounced by the said Lord Ordinary in vacation, under or by virtue, in whole or in part, of the following sections of the Companies Act, 1862, shall, from the dates of such orders or judgments, and notwithstanding any reclaiming note against the same, be carried out and receive effect till such reclaiming note be disposed of by the Court, *videlicet*, sections eighty-five, eighty-seven, eighty-nine, ninety-three (except in regard to the removal or remuneration of liquidators), ninety-five, ninety-six (except in regard to the power to sell), one hundred, one hundred and eighteen, first part of one hundred and forty-one, one hundred and forty-seven, one hundred and fifty (except in regard to the removal of liquidators and the filling up of vacancies caused by such removal), one hundred and ninety-seven, one hundred and ninety-eight, and two hundred and one; and also sections one hundred and twenty-two and one hundred and twenty-three of the Companies Act, 1862, so far as they may affect the sections above enumerated.

Provided that nothing in this section contained shall in any way affect the provisions of section one hundred and twenty-one of the Companies Act, 1862, in reference to decrees for payment of calls in the winding-up of companies, whether voluntarily or by or subject to the supervision of the Court.

6. When the Court makes a winding-up or a supervision order, or at any time thereafter, it shall be lawful for the Court, in either division thereof, if it thinks fit, to direct all subsequent proceedings in the winding-up to be taken before one of the permanent Lords Ordinary, and to remit the winding-

Winding-up
may be re-
mitted to
Lord Ord-
inary.

up to him accordingly; and thereupon such Lord Ordinary shall, for the purposes of the winding-up, be deemed to be "the Court," within the meaning of the recited Acts and this Act, and shall have, for the purposes of such winding-up, all the jurisdiction and powers of the Court of Session: Provided always, that all orders or judgments pronounced by such Lord Ordinary shall be subject to review only by reclaiming note in common form, presented (notwithstanding the terms of section one hundred and twenty-four of the Companies Act, 1862) within fourteen days from the date of such order or judgment. But, should a reclaiming note not be presented and moved during session, the provisions of section five of this Act shall apply to such orders or judgments: Provided also, that the said Lord Ordinary may report to the division of the Court any matter which may arise in the course of the winding-up. This section and the immediately preceding section shall come into force from the passing of this Act, and shall include companies then in the course of being wound up.

PREFERENTIAL PAYMENTS IN BANKRUPTCY ACT, 1888.

51 & 52 VICT. c. 62.

Priority of
debts.

1.—(1.) In the distribution of the property of a bankrupt, and in the distribution of the assets of any company being wound up under the Companies Act, 1862, and the Acts amending the same, there shall be paid in priority to all other debts—

- (a.) All parochial or other local rates due from the bankrupt or the company at the date of the receiving order or, as the case may be, the commencement of the winding-up, and having become due and payable within twelve months next before that time, and all assessed taxes, land tax, property or income tax assessed on the bankrupt or the company up to the fifth day of April next before the date of the receiving order, or, as the case may be, the commencement of the winding-up, and not exceeding in the whole one year's assessment;
- (b.) All wages or salary of any clerk or servant in respect of services rendered to the bankrupt or the company during four months before the date of the receiving order or, as the case may be, the commencement of the winding-up, not exceeding fifty pounds; and
- (c.) All wages of any labourer or workman not exceeding twenty-five pounds, whether payable for time or for piece work, in respect of services rendered to the bankrupt or the company during two months before the date of the receiving order or, as the case may be, the commencement of the winding-up: Provided that, where any labourer in husbandry has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the year of hiring, he shall have priority in respect of the whole of such sum, or a part thereof, as the Court may decide to be due under the contract, proportionate to the time of service up to the date of the receiving order or, as the case may be, the commencement of the winding-up.

(2.) The foregoing debts shall rank equally between themselves and shall be paid in full, unless the property of the bankrupt is, or the assets of the company are, insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(3.) Subject to the retention of such sums as may be necessary for the costs of administration or otherwise, the foregoing debts shall be discharged forthwith so far as the property of the debtor, or the assets of the company, as the case may be, is or are sufficient to meet them.

(4.) In the event of a landlord or other person distraining or having distrained on any goods or effects of a bankrupt or a company being wound up within three months next before the date of the receiving order or the winding-up order respectively, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof.

Provided, that in respect of any money paid under any such charge the landlord or other person shall have the same rights of priority as the person to whom such payment is made.

(5.) This section, so far as it relates to the property of a bankrupt, shall have effect as part of section forty of the Bankruptcy Act, 1883.

(6.) This section shall apply, in the case of a deceased person who dies insolvent, as if he were a bankrupt, and as if the date of his death were substituted for the date of the receiving order.

2.—(1.) Nothing in this Act shall alter the effect of section five of the Act twenty-eight and twenty-nine Victoria, chapter eighty-six, "To Amend the Law of Partnership" (a), or shall prejudice the provisions of the Friendly Societies Act, 1875, or shall affect the priority given to the payment of funeral and testamentary expenses by section one hundred and twenty-five of the Bankruptcy Act, 1883.

Savings.

(2.) Nothing in this Act shall affect the provisions of the Stannaries Act, 1887.

3. This Act shall apply only in the case of receiving orders and orders for the administration of the estates of deceased debtors according to the law of bankruptcy made and windings-up commenced after the commencement of this Act.

50 & 51 Vict. c. 43.

Application of Act.

4. This Act shall not apply to Ireland.

Extent of Act.

5. This Act shall commence and come into operation from and immediately after the last day of December one thousand eight hundred and eighty-eight.

Commencement of Act.

[S. 6 repeals, amongst other Acts, the Companies Act, 1883 (46 & 47 Vict. c. 28), except as regards its application to Ireland, and now also repealed as to Ireland by 52 & 53 Vict. c. 60, s. 8.]

Repeal.

7. This Act may be cited as the Preferential Payments in Bankruptcy Act, 1888.

Short title.

THE COMPANIES (MEMORANDUM OF ASSOCIATION) ACT, 1890.

53 & 54 VICT. c. 62.

1.—(1.) Subject to the provisions of this Act, a company registered under the Companies Acts, 1862 to 1886, may, by special resolution, alter the provisions of its memorandum of association or deed of settlement with respect to the objects of the company, so far as may be required for any of the purposes hereinafter specified, or alter the form of its constitution by substituting a memorandum and articles of association for a deed of settlement, either with or without any such alteration as aforesaid with respect to the objects of the company, but in no case shall any such alteration take effect until confirmed on petition by the Court which has jurisdiction to make an order for winding up the company.

Power for company to alter objects or form of constitution subject to confirmation by Court.

(2.) Before confirming any such alteration the Court must be satisfied—

(a.) That sufficient notice has been given to every holder of debentures or debenture stock of the company, and any persons or class of

(a) Repealed by 53 & 54 Vict. c. 39, s. 48.

persons whose interests will, in the opinion of the Court, be affected by the alteration; and

- (b.) That, with respect to every creditor who in the opinion of the Court is entitled to object, and who signifies his objection in manner directed by the Court, either his consent to the alteration has been obtained or his debt or claim has been discharged or has been determined, or has been secured to the satisfaction of the Court.

Provided that the Court may, in the case of any person or class of persons, for special reasons, dispense with the notice required by this section.

(3.) An order confirming any such alteration may be made on such terms and subject to such conditions as to the Court seems fit, and the Court may make such orders as to costs as it deems proper.

(4.) The Court shall, in exercising its discretion under this Act, have regard to the rights and interests of the members of the company, or of any class of those members, as well as to the rights and interests of the creditors, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase of the interests of dissentient members; and the Court may give such directions and make such orders as it may think expedient for the purpose of facilitating any such arrangement or carrying the same into effect: Provided always, that it shall not be lawful to expend any part of the capital of the company in any such purchase.

(5.) The Court may confirm, either wholly or in part, any such alteration as aforesaid with respect to the objects of the company if it appears that the alteration is required in order to enable the company—

- (a.) To carry on its business more economically or more efficiently; or
- (b.) To attain its main purpose by new or improved means; or
- (c.) To enlarge or change the local area of its operations; or
- (d.) To carry on some business or businesses which under existing circumstances may conveniently or advantageously be combined with the business of the company; or
- (e.) To restrict or abandon any of the objects specified in the memorandum of association or deed of settlement.

Registration of order together with memorandum as altered or substituted memorandum and articles and consequence thereof.

2.—(1.) Where a company has altered the provisions of its memorandum of association or deed of settlement with respect to the objects of the company, or has altered the form of its constitution by substituting a memorandum and articles of association for a deed of settlement, and such alteration has been confirmed by the Court, an office copy of the order confirming such alteration, together with a printed copy of the memorandum of association or deed of settlement so altered, or together with a printed copy of the substituted memorandum and articles of association (as the case may be), shall be delivered by the company to the Registrar of Joint Stock Companies within fifteen days from the date of the order, and the registrar shall register the same, and shall certify under his hand the registration thereof, and his certificate shall be conclusive evidence that all the requisitions of this Act with respect to such alteration and the confirmation thereof have been complied with, and thenceforth (but subject to the provisions of this Act) the memorandum or deed of settlement so altered shall be the memorandum of association or deed of settlement of the company, or, as the case may be, such substituted memorandum and articles of association shall apply to the company in the same manner as if the company were a company registered under Part I. of the Companies Act, 1862, with such memorandum and articles of association, and the company's deed of settlement shall cease to apply to the company.

(2.) If a company makes default in delivering to the registrar any document required by this Act to be delivered to him, the company shall be liable to a penalty not exceeding ten pounds for every day during which it is in default.

3.—(1.) This Act may be cited as the Companies (Memorandum of Association) Act, 1890.

(2.) This Act and the Companies Acts, 1862 to 1886, shall be construed

Short title and construction.

as one Act, and may be cited collectively as the Companies Acts, 1862 to 1890.

(3.) In this Act the expression "deed of settlement" includes any contract of copartnership or other instrument constituting or regulating the company and not being an Act of Parliament, a royal charter, or letters patent.

THE COMPANIES (WINDING-UP) ACT, 1890.

[*Ante*, Part II.]

THE DIRECTORS' LIABILITY ACT, 1890.

1. This Act may be cited as the Directors' Liability Act, 1890.

2. This Act shall be construed as one with the Companies Acts, 1862 to 1890.

3.—(1.) Where after the passing of this Act a prospectus or notice invites persons to subscribe for shares in or debentures or debenture stock of a company, every person who is a director of the company at the time of the issue of the prospectus or notice, and every person who having authorized such naming of him is named in the prospectus or notice as a director of the company, or as having agreed to become a director of the company either immediately or after an interval of time, and every promoter of the company, and every person who has authorized the issue of the prospectus or notice, shall be liable to pay compensation to all persons who shall subscribe for any shares, debentures, or debenture stock on the faith of such prospectus or notice for the loss or damage they may have sustained by reason of any untrue statement in the prospectus or notice, or in any report or memorandum appearing on the face thereof, or by reference incorporated therein or issued therewith, unless it is proved—

Short title.

Construction.

Liability for statements in prospectus.

(a.) With respect to every such untrue statement not purporting to be made on the authority of an expert, or of a public official document or statement, that he had reasonable ground to believe, and did up to the time of the allotment of the shares, debentures, or debenture stock, as the case may be, believe, that the statement was true; and

(b.) With respect to every such untrue statement purporting to be a statement by or contained in what purports to be a copy of or extract from a report or valuation of an engineer, valuer, accountant, or other expert, that it fairly represented the statement made by such engineer, valuer, accountant, or other expert, or was a correct and fair copy of or extract from the report or valuation. Provided always, that notwithstanding that such untrue statement fairly represented the statement made by such engineer, valuer, accountant, or other expert, or was a correct and fair copy of an extract from the report or valuation, such director, person named, promoter, or other person, who authorized the issue of the prospectus or notice as aforesaid, shall be liable to pay compensation as aforesaid if it be proved that he had no reasonable ground to believe that the person making the statement, report, or valuation was competent to make it; and

(c.) With respect to every such untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, that it was a correct and fair representation of such statement or copy of or extract from such document,

or unless it is proved that having consented to become a director of the company he withdrew his consent before the issue of the prospectus or notice, and

that the prospectus or notice was issued without his authority or consent, or that the prospectus or notice was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was so issued without his knowledge or consent, or that after the issue of such prospectus or notice and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent thereto, and caused reasonable public notice of such withdrawal, and of the reason therefor, to be given.

(2.) A promoter in this section means a promoter who was a party to the preparation of the prospectus or notice, or of the portion thereof containing such untrue statement, but shall not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company.

(3.) Where any company existing at the passing of this Act, which has issued shares or debentures, shall be desirous of obtaining further capital by subscriptions for shares or debentures, and for that purpose shall issue a prospectus or notice, no director of such company shall be liable in respect of any statement therein, unless he shall have authorized the issue of such prospectus or notice, or have adopted or ratified the same.

(4.) In this section the word "expert" includes any person whose profession gives authority to a statement made by him.

Indemnity where name of person has been improperly inserted as a director.

4. Where any such prospectus or notice as aforesaid contains the name of a person as a director of the company, or as having agreed to become a director thereof, and such person has not consented to become a director, or has withdrawn his consent before the issue of such prospectus or notice, and has not authorized or consented to the issue thereof, the directors of the company, except any without whose knowledge or consent the prospectus or notice was issued, and any other person who authorized the issue of such prospectus or notice shall be liable to indemnify the person named as a director of the company, or as having agreed to become a director thereof as aforesaid, against all damages, costs, charges, and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or notice, or in defending himself against any action or legal proceedings brought against him in respect thereof.

Contribution from co-directors, &c.

5. Every person who by reason of his being a director, or named as a director or as having agreed to become a director, or of his having authorized the issue of the prospectus or notice, has become liable to make any payment under the provisions of this Act, shall be entitled to recover contribution, as in cases of contract, from any other person who, if sued separately, would have been liable to make the same payment.

THE COMPANIES (WINDING-UP) ACT, 1893.

56 & 57 VICT. c. 58.

An Act to amend Section Ten of the Companies (Winding-up) Act, 1890.

[22nd Sept., 1893.]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Effect of order under 53 & 54 Vict. c. 63, s. 10. 46 & 47 Vict. c. 52.

1. An order for payment of money made by the Court under section ten of the Companies (Winding-up) Act, 1890, shall be deemed to be a final judgment within the meaning of paragraph (g) of sub-section one of section four of the Bankruptcy Act, 1883.

2. This Act may be cited as the Companies (Winding-up) Act, 1893.

Short title.

THE STANNARIES ACT, 1869.

32 & 33 VICT. c. 19.

2. In this Act—

The term “the Stannaries” means the Stannaries of Devon and Cornwall:

The term “vice-warden” means the vice-warden of the Stannaries:

The term “the Court” means the Court of the vice-warden:

The term “the registrar” means the registrar of the Court:

The term “company” includes any persons or partnership body working a mine in the Stannaries:

The term “purser” means the purser for the time being of a company, and if there is no purser, then the secretary for the time being, or if there is no secretary, then the principal agent for the time being of a company:

The term “cost-book” includes all books and papers relating to the business of a mine, which are for the time being kept by a purser, or which, according to the custom of the Stannaries, or the directions of the company, ought to be kept by him.

3. This Act extends only to mines within the Stannaries, and subject to the jurisdiction of the Court, or within the cognizance of the vice-warden; and nothing in this Act shall extend to companies registered under any of the Joint Stock Companies Acts, except where such companies are expressly mentioned or necessarily implied.

25. On a company being wound up in the Court of the vice-warden or any other Court, a former shareholder, notwithstanding the provisions contained in the Companies Act, 1862, Part VIII., section 200, shall not be liable to contribute to the assets of the company if he has ceased to be a shareholder for a period of two years or upwards before the mine had ceased to be worked or before the date of the winding-up order.

26. On a company formed for or engaged in working a mine (including a company registered under any of the Joint Stock Companies Acts) being wound up in the Court of the vice-warden, or any other Court or otherwise, the date of the winding-up order having been not earlier than two months after the passing of this Act, then and in every such case the amount (if any) due at the date of the winding-up order to miners, artisans, and labourers employed, wholly or in part, in or about the mine, in respect of their wages or other earnings in relation to the mine, not exceeding three months' wages or earnings to each such person, shall be paid in priority to all other debts of the company.

33. Where an order is made for the winding-up a company in Court, whether the same be a registered or unregistered company, and no official liquidator is appointed, the registrar shall have authority, with the sanction of the vice-warden, to perform all the ordinary duties of an official liquidator, and to exercise all the powers assigned by the Companies Act, 1862, to such liquidator, so far as such duties or powers are not incompatible with his official duties as registrar.

Provided always, that the registrar shall not in such case be called upon to give any such security as may be required of an official liquidator under section ninety-two of the last-mentioned Act, unless the lord-warden of the Stannaries or the vice-warden, by some general rule of the Court, shall otherwise order; nor shall he be entitled to any remuneration for the performance of the said duties, other than the salary now received by or that may hereafter be assigned to him in his official character of registrar; nor shall it be necessary for him to use the name or style of official liquidator, nor any other style than that of registrar, unless it shall become necessary for him to take out letters of administration to any deceased contributory; and in proving a debt due from any contributory who shall have become a bankrupt within the intent and meaning of section eighty-seven of the Companies Act, 1862, a certificate of the debt signed by the registrar, with the seal of the Court attached, shall be accepted in the Court of Bankruptcy as sufficient proof of

Interpretation of terms.

Extent and application of Act.

Limitation of liability of past shareholders.

Wages of miners, &c.

Duties of registrar in liquidation of a company.

such debt as against the estate of the bankrupt, without requiring the oath or affidavit of the registrar.

Provided also, that the registrar, in the performance of such duties and exercise of such powers, shall not be liable to any penalty prescribed by the said Companies Act, 1862, and imposed on official liquidators as such, or become personally liable in respect of any act done or proceeding taken by him by the order or authority or with the sanction of the vice-warden acting in his judicial character.

34. In cases where several companies are in course of liquidation by or under the superintendence of the Court, if it shall appear to the vice-warden that a person who is a contributory of one of the said companies is also a creditor claiming a debt against one of the other companies, the vice-warden may, in his discretion, and after due inquiry into the facts, direct that the said debt, when allowed, shall be attached, and payment thereof to the creditor suspended for a time certain, as a security for payment of all or any calls that are or may in course of liquidation become due from him to the company of which he is a contributory; and the amount thereof shall be applicable and applied to such payment in due course; provided that no such order of attachment shall prejudice any claim which the company so indebted to him as creditor may have against him by way of set-off, counter-claim, or otherwise, or any lawful claim of lien or specific charge on the said debt in favour of any third person.

35. A transfer of shares made for the purpose of getting rid of the further liability of a shareholder, as such, for a nominal or no consideration, or to a person without any apparent pecuniary ability to pay the reasonable expenses of working a mine, or to a person in the menial or domestic service of the transferor shall be presumed to be a fraudulent transfer, and need not be recognized by the company, or by the Court on the winding-up of the company, whether the company be a registered or unregistered company.

38. The provision of section eighty-three of the Companies Act, 1862, contained, in second paragraph thereof, shall be amended and read as follows: namely, that the vice-warden may direct that petitions to wind up a company shall be heard by him at such time or place as he may think fit within the Stannaries, or within or near to the place where the registered or other chief office of the company is situate, or if such office be distant one hundred and fifty miles or more from Truro (measured by the public railways), then in London or Westminster; or with the consent of the party or parties petitioning, and of the company, represented by its secretary, purser, or other proper officer, the hearing may be in any part of England; and all orders made by the vice-warden on such hearing in any of the above cases shall be as valid and effectual as if they had been made at Truro.

THE STANNARIES ACT, 1887.

50 & 51 VICT. c. 43.

Preliminary.

Short Title.

1. This Act may be cited as the Stannaries Act, 1887.

Interpretation.

2. In this Act—

The term “the Stannaries” means the Stannaries of Cornwall and Devon:

The term “vice-warden” means the vice-warden of the Stannaries for the time being:

“Court” means the vice-warden’s Court:

The “registrar” means the registrar for the time being of the Court:

The term “company” means any persons or partnership body, joint stock company, company constituted under the Companies Act, 1862, or any statutory modification thereof, and whether corporate or unincorporate, and whether limited or unlimited, engaged in or formed for working mines within the Stannaries:

25 & 26 Vict.
c. 89.

Attachment
of debt due
to a contributory
on winding-up.

Fraudulent
transfers of
shares.

Hearing of
petition for
winding-up.

The term "purser" means the purser for the time being of a company, or if there is no purser, then the secretary for the time being, or if there is no secretary, then the principal agent or manager for the time being of a company :

The term "cost-book" includes all books and papers relating to the business of a mine which are for the time being kept by a purser, or which, according to law or the custom of the Stannaries, ought to be kept by him :

The term "lessors" means the lessor or grantor of any lease, or grant of any mine, or licence to exercise mining rights and powers, and includes every person entitled under any such lease, grant, or licence, or any other instrument whatever, to receive the rents or dues payable in respect of any mine :

The term "mortgages" includes all holders of mortgage-debentures, mortgages, or other charges issued by any company :

The term "sheriff" includes any officer charged with the execution of a writ or other process :

The term "miners" includes all artizans, labourers, and other persons working in and about a mine, except the purser, secretary, agent, or manager :

The term "wages" includes all earnings by miners arising from any description of piece or other work, or as tributers or otherwise :

The term "mining effects" includes machinery, materials, goods, and chattels, and all ores and halvans, and all other personal property appertaining to a mine, or used or intended to be used for mining purposes.

3. This Act extends only to metalliferous mines and tin streaming works within the Stannaries.

Extent of Act.

4. Miners employed wholly or in part in or about a mine, in respect of their wages in relation to the mine, not exceeding an amount equal to three months' wages to each person, shall have for such wages a first charge upon all mining effects in and about the said mine, belonging to the said mine or to any company by whom the said mine is worked, and upon all money of the company in the count-house or in charge of the purser, agent, or secretary, or other person on behalf of the company, or at the credit of the company at their bankers, and upon all other assets whatever of the company in respect of the said mine, and such first charge shall, subject to the provisions of the tenth section of this Act, have priority over all claims for rents, royalties, dues, or otherwise by the lessors of the said mine, or by mortgagees or judgment, execution, or other creditors of the said company, or by any other persons whatever.

Wages to have priority.

8. In addition to every other remedy for obtaining payment of their wages, the said miners, or any of them, may institute proceedings in the Court, by way of summons, for enforcing the said first charge given to them by this Act, and the vice-warden may grant and make (*ex parte* or otherwise) all such injunctions and orders as he may think necessary and proper in order to secure such miners from loss ; and if any amount ordered to be paid shall not have been paid within the time mentioned in such order, execution may be levied on and sale made of any mining effects in or on such mine as are by law liable to be distrained for rent.

Court to enforce priority.

9. If at the commencement of the winding-up of any company whether by the Court or otherwise, any wages, not exceeding such an amount as under the fourth section would be made a first charge, are unpaid, the same shall be paid by the official liquidator or liquidator forthwith in priority to all other costs except such costs of and incidental to the making of the order for the winding-up as in the opinion of the Court shall have been properly incurred, and, subject to the tenth section of this Act, to all claims, whether by mortgagees, execution creditors, or any other person whatsoever ; and, subject as aforesaid, the Court may by order charge the whole or any part of the assets of the company, in absolute priority to all claims and to all existing mortgages or charges thereon, with the payment of a sum sufficient to discharge the said wages, with interest thereon at a rate not exceeding five per centum per

Under winding-up proceedings money may be borrowed to pay wages.

annum, and such charge may be made in favour of any person who is willing to advance the requisite amount, or any part thereof, and as soon as the said sum has been so advanced the said wages shall be paid without delay, so far as such advanced amount extends, and in such order of payment as the Court directs.

Saving of
rights of
clerks and
servants.

10. Nothing in the fourth or eighth section of this Act is to be taken to have the effect of defeating or abridging or extending the right conferred upon clerks and servants by the Companies Act, 1883, to be paid in the winding-up of a company in priority to other creditors, *pari passu* with labourers and workmen out of such assets only as are distributable by the liquidator or official liquidator within the meaning of the said Act, except that such priority shall only be given to the extent of three months, and shall not extend to the principal agent or manager, purser or secretary.

13.—(1.) After the commencement of this Act, any custom or rule of law to the contrary notwithstanding, all moneys deducted in any mine from the wages or earnings of or otherwise contributed by the miners for the purposes of a mine club, or accident, or sick or benefit fund, shall, unless a majority of the miners shall by resolution decide otherwise, be deemed to belong to the miners and not to the company, and the said moneys, and any contributions added thereto by the shareholders, shall be placed to a separate account, and the details thereof, showing the amount received and the several payments thereout, and to whom made during each preceding sixteen weeks, shall be set out in the balance sheet to be presented to the shareholders at each ordinary meeting; and a copy of the same shall be posted in the miners' dry or changing sheds, and in the account house; and it shall be lawful for the miners in any mine, if they so please, to appoint any two of themselves to audit the said mine club fund accounts. Provided that section thirty-four of this Act shall not restrain the right of the miners to pass any such resolution, and such resolution shall have effect for twelve calendar months only after the passing thereof. And in the event of any money being so deducted for the purpose of medical attendance, each miner shall be entitled to name a qualified medical practitioner to whom the amount so deducted from his wages shall be paid for such medical attendance.

(2.) Upon the winding-up of any company in the Court of the vice-warden or any other Court, or otherwise, the said mine club moneys or fund shall not be deemed to be or be applied as parts of the assets of the company in liquidation of the debts of the company or otherwise; but shall be accounted for by the purser or any other person in possession of the fund to the liquidator, and shall be recoverable by him, and shall be applied in accordance with the rules of the club. Where a company is being wound up voluntarily, the liquidator, or any other person claiming to be entitled to any such moneys or fund, may apply to the Court for directions or to determine any question arising in the matter, in the same manner as if the company were being wound up by the Court.

Relinquish-
ment not
valid unless
delivered six
weeks before
stoppage of
mine.

Amalgama-
tion of
adjoining
mines.

22. After the commencement of this Act a relinquishment shall not have any effect if it be delivered within the six weeks immediately preceding the day on which a resolution to wind up the company shall be legally passed at a duly convened meeting of the company, or on which an order shall be made to wind up the same by or subject to the supervision of the Court.

27. When the limits of any mine join those of any other mine the companies respectively working the said mines may, with the consent in writing of the respective lessors thereof in all cases where such consent is by law or custom necessary, amalgamate and become one company, provided that no such amalgamation shall take place unless each of the said companies shall authorize the same by a special resolution, to which two-thirds in value of the shareholders in the said company shall consent in writing; such resolution shall be registered in the Court, and the amalgamation shall not take effect until such registration, and shall be advertised in such manner as the Court directs.

Petitions to
wind up
mining com-
panies to be

28. The Court of the vice-warden of the Stannaries shall have the same jurisdiction in the winding-up of all companies formed for working mines within the Stannaries (unless they are shown to be then actually working

mines or to be engaged in any other undertaking, or to have entered into any contract for such working or undertaking beyond the limits of the Stannaries), as has heretofore been exercised by the said Court, pursuant to the eighty-first section of the Companies Act, 1862, in respect of companies engaged in working any mine within and subject to the jurisdiction of the said Stannaries.

presented in
Stannary
Court.
25 & 26 Vict.
c. 89.

29. When and as often after the commencement of this Act as the registrar of the Court shall have standing in his name in the Bank of England, or in either of the local banks in which he has been duly authorized to open accounts as registrar, any moneys which have become distributable or payable under orders of the Court in creditors or pursers suits, or in matters arising out of the winding-up of companies, pursuant to the Companies Act, 1862, or any other Act, and which have remained unclaimed by or on behalf of any person thereto entitled for a period of two years, and the registrar shall report the same to the vice-warden, the vice-warden is hereby empowered to cause to be invested, in the joint names of himself and the registrar, in Government securities, the whole or any portion of such moneys, without prejudice to the claim of any person entitled to any part of the principal sums, and the income thereof, and the income derived from a sum of two hundred and seventeen pounds five shillings and fourpence, now standing in the joint names of the vice-warden and the registrar, in the Three Pound per Cent. Consolidated Bank Annuities, under the authority of an order of the vice-warden, approved by the Lord Chancellor, sanctioning the investment of a portion of the amount of unclaimed deposits pursuant to the sixty-first section of seventh and eighth Victoria, chapter one hundred and five, and the income to be derived from any further investments which may hereafter be made under the same authority shall be allowed to accumulate; and the said several incomes meanwhile shall be kept as separate funds apart from the ordinary fees of the Court arising from other business; and be it further enacted, that the expense of making the said investments, or any re-investments of the unapplied produce thereof in the like securities, and any expenses which may be incurred in the sales of stock, to satisfy the claims of parties who may be entitled thereto, and any expense of keeping the necessary accounts, shall be a first charge upon the income derived from the securities.

Unclaimed
money.

34. Any contract expressed or implied with the employers, or terms of hiring, which would in effect deprive miners of any right secured to them by this Act or impose any condition whatever in reference to the disposition of club or benefit funds, shall, so far as such rights are affected, and in respect of any such condition, be void and of no effect.

Evasions of
this Act to
be void.

35. Printed copies of this Act, and of the rules and regulations for the time being in force in any mine, shall be kept posted up in the smiths shop and in the miners dry or changing shed of every mine.

Printed
copies of this
Act to be
posted up.

36. This Act shall come into operation on the first day of December one thousand eight hundred and eighty-seven.

Commence-
ment of Act.

THE LIFE ASSURANCE COMPANIES ACT, 1870.

33 & 34 VICT. c. 61.

[1. Short title.]

2. In this Act—

The term "company" means any person or persons, corporate or unincorporate, not being registered under the Acts relating to friendly societies, who issue or are liable under policies of assurance upon human life within the United Kingdom, or who grant annuities upon human life within the United Kingdom:

Interpreta-
tion of terms.

The term "chairman" means the person for the time being presiding over the court or board of directors of the company:

The term "policy-holder" means the person who for the time being is the legal holder of the policy for securing the life assurance, endowment, annuity, or other contract with the company:

The term "financial year" means each period of twelve months at the end of which the balance of the accounts of the company is struck, or if no such balance is struck, then each period of twelve months ending with the thirty-first day of December:

The term "Court" means, in the case of a company registered or having its head office in England, the High Court of Chancery; in the case of a company registered or having its head office in Ireland, the Court of Chancery in Ireland; in all cases of companies registered or having their head offices in Scotland, the Court of Session, in either division thereof:

The term "registrar" means the Registrar of Joint Stock Companies in England and Scotland, and the Assistant Registrar of Joint Stock Companies in Ireland.

[3. Deposit necessary to be made (a).]

[4. As to life funds being kept separate.]

Statements
to be made
by com-
panies.

5. From and after the passing of this Act every company shall, at the expiration of each financial year of such company, prepare a statement of its revenue account for such year, and of its balance-sheet at the close of such year, in the forms respectively contained in the first and second schedules to this Act.

Statements
by company
doing other
than life
business.

6. Every company which, concurrently with the granting of policies of assurance or annuities on human life, transacts any other kind of assurance or other business shall, at the expiration of each such financial year as aforesaid, prepare statements of its revenue account for such year, and of its balance-sheet at the close of such year, in the forms respectively contained in the third and fourth schedules of the Act.

Actuarial
report and
abstract.

7. Every company shall, once in every five years if established after the passing of this Act, and once every ten years if established before the passing of this Act, or at such shorter intervals as may be prescribed by the instrument constituting the company, or by its regulations or bye-laws, cause an investigation to be made into its financial condition by an actuary, and shall cause an abstract of the report of such actuary to be made in the form prescribed in the fifth schedule to this Act.

Statement
of life and
annuity
business.

8. Every company shall, *on or before the thirty-first day of December, one thousand eight hundred and seventy-two, and thereafter within nine months after the date of each such investigation as aforesaid into its financial condition, prepare a statement of its life assurance and annuity business in the form contained in the sixth schedule to this Act, each of such statements to be made up as at the date of the last investigation, whether such investigation be made previously or subsequently to the passing of this Act: Provided as follows (b):*

[Sub-s. 1, which was repealed by the Statute Law Revision Act, 1883, provided for financial investigations during the year 1873, and statements consequent thereupon.]

(2.) If such investigation be made annually by any company, such company may prepare such statement at any time, so that it be made at least once in every three years.

The expression date of each such investigation in this section shall mean the date to which the accounts of each company are made up for the purposes of each such investigation.

[9. Forms may be altered.]

[10. Statements, &c., to be signed and printed and deposited with Board of Trade (a).]

[11. Copies of statements to be given to shareholders, &c.]

List of
shareholders.

12. Every company which is not registered under "The Companies Act,

(a) See the Life Assurance Companies Act, 1872, s. 1. See Board of Trade Rules, 28th August, 1872.

(b) The words in italics were repealed by the Statute Law Revision Act, 1883.

1862," and which has not incorporated in its deed of settlement section ten of "The Companies Clauses Consolidation Act, 1845," shall keep a "Shareholders' Address Book," in accordance with the provisions of that section, and shall furnish, on application, to every shareholder and policy-holder of the company a copy of such book, on payment of a sum not exceeding sixpence for every hundred words required to be copied for such purpose.

[13. Deed of settlement to be printed.]

14. Where it is intended to amalgamate two or more companies, or to transfer the life assurance business of one company to another, the directors of any one or more of such companies may apply to the Court, by petition, to sanction the proposed arrangement, notice of such application being published in the *Gazette*, and the Court, after hearing the directors and other persons whom it considers entitled to be heard upon the petition, may confirm the same if it is satisfied that no sufficient objection to the arrangement has been established.

Amalgamation or transfer.

Before any such application is made to the Court a statement of the nature of the amalgamation or transfer, as the case may be, together with an abstract containing the material facts embodied in the agreement or deed under which such amalgamation or transfer is proposed to be effected, and copies of the actuarial or other reports upon which such agreement or deed is founded, shall be forwarded to each policy-holder of both companies in case of amalgamation, or to each policy-holder of the transferred company in case of transfer, by the same being transmitted in manner provided by section one hundred and thirty-six of the Companies Clauses Consolidation Act, 1845, for the transmission to shareholders of notices not requiring to be served personally; and the agreement or deed under which such amalgamation or transfer is effected shall be open for the inspection of the policy-holders and shareholders at the office or offices of the company or companies for a period of fifteen days after the issuing of the abstract herein provided.

The Court shall not sanction any amalgamation or transfer in any case in which it appears to the Court that policy-holders representing one-tenth or more of the total amount assured in any company which it is proposed to amalgamate, or in any company the business of which it is proposed to transfer, dissent from such amalgamation or transfer.

No company shall amalgamate with another, or transfer its business to another, unless such amalgamation or transfer is confirmed by the Court in accordance with this section.

Provided always, that this section shall not apply in any case in which the business of any company which is sought to be amalgamated or transferred does not comprise the business of life assurance.

15. When an amalgamation takes place between any companies, or when the business of one company is transferred to another company, the combined company or the purchasing company, as the case may be, shall, within ten days from the date of the completion of the amalgamation or transfer, deposit with the Board of Trade certified copies of statements of the assets and liabilities of the companies concerned in such amalgamation or transfer, together with a statement of the nature and terms of the amalgamation or transfer, and a certified copy of the agreement or deed under which such amalgamation or transfer is effected, and certified copies of the actuarial or other reports upon which such agreement or deed is founded; and the statement and agreement or deed of amalgamation or transfer shall be accompanied by a declaration under the hand of the chairman of each company and the principal managing officer of each company, that to the best of their belief every payment made or to be made to any person whatsoever on account of the said amalgamation or transfer is therein fully set forth, and that no other payments beyond those set forth have been made or are to be made either in money, policies, bonds, valuable securities, or other property by or with the knowledge of any parties to the said amalgamation or transfer.

Statements in case of amalgamation or transfer.

[16. Documents may be transferred from Board of Trade to registry of Joint Stock Companies.]

Penalty for non-compliance with Act.

[17. Documents to be received in evidence.]

18. Every company which makes default in complying with the requirements of this Act shall be liable to a penalty not exceeding fifty pounds for every day during which the default continues; and if default continue for a period of three months after notice of default by the Board of Trade, which notice shall be published in one or more newspapers as the Board of Trade may direct, and after such publication the Court may order the winding-up of the company, in accordance with the Companies Act, 1862, upon the application of one or more policy-holders or shareholders.

[19. Penalty for falsifying statements, &c.]

[20. Penalties how to be recovered and applied.]

Other circumstances under which company may be wound up by the Court of Chancery.

21. The Court may order the winding-up of any company, in accordance with the Companies Act, 1862, on the application of one or more policy-holders or shareholders, upon its being proved to the satisfaction of the Court that the company is insolvent, and in determining whether or not the company is insolvent the Court shall take into account its contingent or prospective liability under policies and annuity and other existing contracts; but the Court shall not give a hearing to the petition until security for costs for such amount as the judge shall think reasonable shall be given, and until a *prima facie* case shall also be established to the satisfaction of the judge; and in the case of a proprietary company having an uncalled capital of an amount sufficient with the future premiums receivable by the company to make up the actual invested assets equal to the amount of the estimated liabilities, the Court shall suspend further proceedings on the petition for a reasonable time (in the discretion of the Court) to enable the uncalled capital, or a sufficient part thereof, to be called up; and if at the end of the original or any extended time for which the proceedings shall have been suspended such an amount shall not have been realized by means of calls as, with the already invested assets, to be equal to the liabilities, an order shall be made on the petition as if the company had been proved insolvent (a).

Power to Court to reduce contracts.

22. The Court, in the case of a company which has been proved to be insolvent, may, if it thinks fit, reduce the amount of the contracts of the company upon such terms and subject to such conditions as the Court thinks just, in place of making a winding-up order.

Notices under this Act to policy-holders.

23. Any notice which is by this Act required to be sent to any policy-holder may be addressed and sent to the person to whom notices respecting such policy are usually sent, and any notice so addressed and sent shall be deemed and taken to be notice to the holder of such policy.

[24. Statements, &c., to be laid before Parliament.]

[25. Exceptions.]

[The first schedule contains a form of revenue account for life assurance companies.]

[The second schedule contains a form of balance sheet for life assurance companies.]

[The third schedule contains a form of revenue account for life assurance companies transacting other kinds of assurance or business.]

[The fourth schedule contains a form of balance-sheet for life assurance companies transacting other kinds of assurance or business.]

[The fifth schedule contains a form of statement of the valuation of liabilities under life policies and annuities, to be made by the actuary, with forms subsidiary thereto.]

[The sixth schedule contains a form of statement of life assurance and annuity business.]

(a) See s. 82 of the Act of 1862. See Act, 1872, *infra*.
s. 4 of the Life Assurance Companies

THE LIFE ASSURANCE COMPANIES ACT, 1871.

34 & 35 VICT. c. 58.

[S. 1, providing for payment into Court and orders as to sums deposited under 33 & 34 Vict. c. 61, s. 3, was repealed by the Statute Law Revision Act, 1883.]

2. Section twenty-five of the Life Assurance Companies Act, 1870, shall be construed as if the words "chapter twenty-four" were and had at and from the date of the passing of such last-mentioned Act been inserted therein in place of "chapter forty-one;" and Her Majesty's printers shall in all copies of the Life Assurance Companies Act, 1870, which may be printed after the passing of this Act, insert the words "chapter twenty-four" in the place of the words "chapter forty-one" in section twenty-five of the said Life Assurance Companies Act, 1870.

Amendment
of s. 25 of
33 & 34 Vict.
c. 61.

[3. Construction and short title.]

THE LIFE ASSURANCE COMPANIES ACT, 1872.

35 & 36 VICT. c. 41.

[1. As to deposit by company in Court.]

[2. Separation of life funds.]

[3. Deposit of statement and abstract required by 33 & 34 Vict. c. 61, s. 10.]

4. Where the business or any part of the business of a life assurance company has, either before or after the passing of this Act, been transferred to another company under an arrangement in pursuance of which such first-mentioned company (in this Act called the subsidiary company) or the creditors thereof has or have claims against the company to which such transfer was made (in this Act called the principal company), then, if such principal company is being wound up by or under the supervision of the Court, either at or after the passing of this Act, the Court shall (subject as hereinafter mentioned) order the subsidiary company to be wound up in conjunction with the principal company, and may by the same or any subsequent order appoint the same person to be liquidator for the two companies and make provision for such other matters as may seem to the Court necessary with a view to such companies being wound up as if they were one company; and the commencement of the winding-up of the principal company shall, save as otherwise ordered by the Court, be the commencement of the winding-up of the subsidiary company: the Court nevertheless shall have regard, in adjusting the rights and liabilities of the members of the several companies between themselves, to the constitution of such companies, and to the arrangements entered into between the said companies, in the same manner as the Court has regard to the rights and liabilities of different classes of contributories in the case of the winding-up of a single company, or as near thereto as circumstances admit.

Winding-up
of subsidiary
company to
be ancillary
to winding-
up of
principal
company.

Where any subsidiary company or company alleged to be subsidiary is not in process of being wound up at the same time as the principal company to which it is subsidiary, the Court shall not direct such subsidiary company to be wound up unless after hearing all objections (if any) that may be urged by or on behalf of such company against its being wound up, the Court is of opinion that such company is subsidiary to the principal company, and that the winding-up of such company in conjunction with the principal company is just and equitable.

Where any subsidiary company and principal company are being wound up by different branches of the Court, the Court to which appeals from such

branches he shall make an order directing in which branch the winding-up of such company is to be carried on, and the necessary proceedings shall be taken for carrying such order into effect.

An application may be made in relation to the winding-up of any subsidiary company in conjunction with a principal company by any creditor of, or person interested in, such principal or subsidiary company.

Where a company stands in the relation of a principal company to one company, and in the relation of a subsidiary company to some other company, or where there are several companies standing in the relation of subsidiary companies to one principal company, the Court may deal with any number of such companies together or in separate groups, as it thinks most expedient, upon the principles laid down in this section.

Valuation of
annuities
and policies.

5. Where a life assurance company is being wound up by the Court, or subject to the supervision of the Court, or voluntarily, the value of every life annuity and life policy requiring to be valued in such winding-up shall be estimated in manner provided by the first schedule to this Act, but this section shall not apply to any company the winding-up of which has commenced before the passing of this Act, unless the Court having cognizance of the winding-up so order, when order that Court is hereby empowered to make it if it think it expedient so to do, on the application of any person interested in the winding-up of such company.

Rules in first
and second
schedules to
be rules of
Court.

6. The rules in the first and second schedules to this Act shall be of the same force as if they were rules made in pursuance of the one hundred and seventieth, one hundred and seventy-first, and one hundred and seventy-third sections of "The Companies Act, 1862," as the case may be, and may be altered in manner provided by the said sections, and rules may be made under the said sections for the purpose of carrying into effect the provisions of this Act with respect to the winding-up of companies.

Regulation
as to novations
by
policy-
holders.

7. Where a company, either before or after the passing of this Act, has transferred its business to or been amalgamated with another company, no policy-holder in the first-mentioned company who shall pay to the other company the premiums accruing due in respect of his policy shall by reason of any such payment made after the passing of this Act, or by reason of any other act done after the passing of this Act, be deemed to have abandoned any claim which he would have had against the first-mentioned company on due payment of premiums to such company, or to have accepted in lieu thereof the liability of the other company, unless such abandonment and acceptance have been signified by some writing signed by him or by his agent lawfully authorized.

[8. Construction and short title.]

*See Schedule
No. 108*

FIRST SCHEDULE.

Rule for valuing an Annuity.

An annuity shall be valued according to the tables used by the company which granted such annuity at the time of granting the same, and where such tables cannot be ascertained or adopted to the satisfaction of the Court, then according to the table known as the Government Annuities Experience Table, interest being reckoned at the rate of four per centum per annum.

Rule for valuing a Policy.

The value of the policy is to be the difference between the present value of the reversion in the sum assured on the decease of the life, including any bonus or addition thereto made before the commencement of the winding-up and the present value of the future annual premiums.

In calculating such present values the rate of interest is to be assumed as

*See
H. 108
Schedule
1859-1866-1885*

being four per centum per annum, and the rate of mortality as that of the tables known as the seventeen offices experience tables.

The premium to be calculated is to be such premium as according to the said rate of interest and rate of mortality is sufficient to provide for the risk incurred by the office in issuing the policy, exclusive of any addition thereto for office expenses and other charges.

*Letter is a
combined Sp-
Brisson's
Dallas Com-
piled by J. C. A-
Kearney*

SECOND SCHEDULE.

Where an assurance company is being wound up by the Court or subject to the supervision of the Court, the official liquidator in the case of all persons appearing by the books of the company to be entitled to or interested in policies granted by such company, for life assurance, endowment, annuity, or other payment, is to ascertain the value of such policies, and give notice of such value to such persons, and any person to whom notice is so given shall be bound by the value so ascertained unless he gives notice of his intention to dispute such value in manner and within a time to be prescribed by a rule or order of the Court.

ORDER OF COURT,

TUESDAY, THE 11TH DAY OF NOVEMBER, 1862.

Petition to Wind up Company.

1. Every petition for the winding-up of any company by the Court, or subject to the supervision of the Court, shall be intituled in the matter of "The Companies Act, 1862" (a), and of the company to which such petition shall relate, describing the company by its most usual style or form.

2. Every such petition shall be advertised seven clear days before the hearing, as follows:—

(1.) In the case of a company whose registered office, or if there shall be no such office, then whose principal, or last known principal place of business is or was situate within ten miles from Lincoln's Inn Hall, once in the *London Gazette*, and once at least in two London daily morning newspapers.

(2.) In the case of any other company, once in the *London Gazette*, and once at least in two local newspapers circulating in the district where such registered office, or principal, or last known principal place of business, as the case may be, of such company is or was situate.

The advertisement shall state the day on which the petition was presented, and the name and address of the petitioner, and of his solicitor and London agent (if any).

3. Every such petition shall, unless presented by the company, be served at the registered office, if any, of the company, and, if no registered office, then at the principal, or last known principal place of business, of the company, if any such can be found, upon any member, officer, or servant of the company there, or in case no such member, officer, or servant can be found there, then by being left at such registered office or principal place of business, or by being served on such member or members of the company as the Court may direct; and every petition for the winding-up of a company, subject to the supervision of the Court, shall also be served upon the

(a) See Order of Court, 21st March, 1868, r. 1.

liquidator (if any) appointed for the purpose of winding-up the affairs of the company.

4. Every petition for the winding-up of any company, by the Court or subject to the supervision of the Court, shall be verified by an affidavit referring thereto, in the form or to the effect set forth in Form No. 2 in the third schedule hereto; such affidavit shall be made by the petitioner, or by one of the petitioners, if more than one, or, in case the petition is presented by the company, by some director, secretary, or other principal officer thereof; and shall be sworn after and filed within four days after the petition is presented, and such affidavit shall be sufficient *prima facie* evidence of the statements in the petition.

5. Every contributor or creditor of the company shall be entitled to be furnished, by the solicitor to the petitioner, with a copy of the petition, within twenty-four hours after requiring the same, on paying at the rate of fourpence per folio of seventy-two words for such copy.

Order to Wind up Company.

6. Every order for the winding-up of a company by the Court, or subject to its supervision, shall, within twelve days after the date thereof, be advertised by the petitioner once in the *London Gazette*, and shall be served upon such persons (if any) and in such manner as the Court may direct.

7. A copy of every order for winding-up a company, certified to be a true copy thereof as passed and entered, shall be left by the petitioner at the chambers of the judge, within ten days after the same shall have been passed and entered, and in default thereof any other person interested in the winding-up may leave the same, and the judge may, if he thinks fit, give the carriage and prosecution of the order to such person. Upon such copy being left, a summons shall be taken out to proceed with the winding-up of the company, and be served upon all parties who may have appeared upon the hearing of the petition. Upon the return of such summons, a time shall, if the judge think fit, be fixed for the appointment of an official liquidator, and for the proof of debts, and for the list of contributories to be brought in, and directions may be given as to the advertisements to be issued for all or any of such purposes, and generally as to the proceedings and the parties to attend thereon. The proceedings under the order shall be continued by adjournment, and, when necessary, by further summons, and any such direction as aforesaid may be given, added to, or varied, at any subsequent time, as may be found necessary.

Official Liquidator.

8. The judge may appoint a person to the office of official liquidator, without previous advertisement, or notice to any party, or fix a time and place for the appointment of an official liquidator, and may appoint or reject any person nominated at such time and place, and appoint any person not so nominated.

9. When a time and place are fixed for the appointment of an official liquidator, such time and place shall be advertised in such manner as the judge shall direct, so that the first or only advertisement shall be published within fourteen days and not less than seven days before the day so fixed.

10. Every official liquidator shall give security by entering into a recognizance with two or more sufficient sureties, in such sum as the judge may approve; and the judge may, if he shall think fit, accept the security of any guarantee society established by charter or Act of Parliament in England, in lieu of the security of such sureties as aforesaid, or of any of them.

11. The official liquidator shall be appointed by order; and, unless he shall have given security, a time shall be fixed by such order within which he is to do so; and the order shall fix the times or periods at which the official liquidator is to leave his accounts of his receipts and payments at the judge's chambers, and shall direct that all moneys to be received shall be paid into the Bank of England, immediately after the receipt thereof, to the

account of the official liquidator of the company, and an account shall be opened there accordingly; and an office copy of the order shall be lodged at the Bank of England.

12. When an official liquidator has given security pursuant to the directions in the order appointing him, the same shall be certified by the chief clerk, as in the case of a receiver appointed in a cause, subject to giving security.

13. The official liquidator shall, on each occasion of passing his account, and also whensoever the judge may so require, satisfy the judge that his sureties are living, and resident in Great Britain, and have not been adjudged bankrupt or become insolvent, and in default thereof he may be required to enter into fresh security within such time as shall be directed.

14. Every appointment of an official liquidator shall be advertised, in such manner as the judge shall direct, immediately after he has been appointed, and has given security.

15. Where it is desired to appoint provisionally an official liquidator, an application for that purpose may, at any time after the presentation of the petition for winding up the company, be made by summons, without advertisement or notice to any person, unless the judge shall otherwise direct; and such provisional official liquidator may, if the judge shall think fit, be appointed without security.

16. In case of the death, removal, or resignation of an official liquidator, another shall be appointed in his room, in the same manner as directed in the case of a first appointment, and the proceedings for that purpose may be taken by such party interested as may be authorized by the judge to take the same.

17. The official liquidator shall, with all convenient speed after he is appointed, proceed to make up, continue, complete, and rectify the books of account of the company; and shall provide and keep such books of account as shall be necessary, or as the judge may direct, for the purposes aforesaid, and for showing the debts and credits of the company, including a ledger which shall contain the separate accounts of the contributories, and in which every contributory shall be debited from time to time with the amount payable by him in respect of any call to be made as provided by the said Act and these rules.

18. The official liquidator shall be allowed in his accounts, or otherwise paid, such salary or remuneration as the judge may from time to time direct, including any necessary employment of assistants or clerks by the official liquidator, to which regard shall be had; and such salary or remuneration may either be fixed at the time of his appointment, or at any time thereafter, as the judge may think fit. Every allowance of such salary or remuneration, unless made at the time of his appointment, or upon passing an account, shall be made upon application for that purpose by the official liquidator, on notice to such persons (if any), and supported by such evidence as the judge shall require; nevertheless, the judge may from time to time allow any sum he may think fit to the official liquidator, on account of the salary or remuneration to be thereafter allowed.

19. The accounts of the official liquidator shall be left at the judge's chambers at the times directed by the order appointing him, and at such other times as may from time to time be required by the judge, and such accounts shall, upon notice to such parties (if any), as the judge shall direct, be passed and verified in the same manner as receivers' accounts.

Proof of Debts.

20. For the purpose of ascertaining the debts and claims due from the company, and of requiring the creditors to come in and prove their debts or claims, an advertisement shall be issued at such time as the judge shall direct; and such advertisement shall fix a time for the creditors to send their names and addresses, and the particulars of their debts or claims, and the names and addresses of their solicitors (if any), to the official liquidator, and appoint a day for adjudicating thereon.

21. The creditors need not attend upon the adjudication, nor prove their

debts or claims unless they are required to do so by notice from the official liquidator; but, upon such notice being given, they are to come in and prove their debts or claims within a time to be therein specified.

22. The official liquidator shall investigate the debts and claims sent in to him, and ascertain, so far as he is able, which of such debts and claims are justly due from the company; and he shall make out and leave at the chambers of the judge, a list of all the debts and claims sent in to him, distinguishing which of the debts and claims, or parts of debts and claims so claimed are, in his opinion, justly due and proper to be allowed without further evidence, and which of them, in his opinion, ought to be proved by the creditors; and he shall make and file, prior to the time appointed for adjudication, an affidavit, setting forth which of the debts and claims in his opinion are justly due and proper to be allowed without further evidence, and stating his belief that such debts and claims are justly due and proper to be allowed, and the reasons for such belief.

23. At the time appointed for adjudicating upon the debts and claims, or at any adjournment thereof, the judge may either allow the debts and claims upon the affidavit of the official liquidator, or may require the same, or any of them, to be proved by the claimants, and adjourn the adjudication thereof to a time to be then fixed; and the official liquidator shall give notice to the creditors, whose debts or claims have been so allowed, of such allowance.

24. The official liquidator shall give notice to the creditors whose debts or claims have not been allowed upon his affidavit, that they are required to come in and prove the same by a day to be therein named, being not less than four days after such notice, and to attend at a time to be therein named, being the time appointed by the advertisement, or by adjournment (as the case may be) for adjudicating upon such debts and claims.

25. The value of such debts and claims as are made admissible to proof by the 15th section of the said Act, shall, so far as is possible, be estimated according to the value thereof at the date of the order to wind up the company.

26. Interest on such debts and claims as shall be allowed shall be computed, as to such of them as carry interest, after the rate they respectively carry; any creditor whose debt or claim so allowed does not carry interest, shall be entitled to interest, after the rate of 24 per centum per annum, from the date of the order to wind up the company, out of any assets which may remain after satisfying the costs of the winding-up, the debts and claims established, and the interest of such debts and claims as by law carry interest.

27. Such creditors as come in and prove their debts or claims pursuant to notice from the official liquidator, shall be allowed their costs of proof, in the same manner as in the case of debts proved in a cause.

28. The result of the adjudication upon debts and claims shall be stated in a certificate to be made by the chief clerk, and certificates as to any of such debts and claims may be made from time to time. All such certificates shall state whether the debts or claims are allowed or disallowed, and whether allowed as against any particular assets, or in any other qualified or special manner.

List of Contributories.

29. The official liquidator shall, with all convenient speed after his appointment, or at such time as the judge shall direct, make out and leave at the chambers of the judge a list of the contributories of the company; and such list shall be verified by the affidavit of the official liquidator, and shall, so far as is practicable, state the respective addresses of, and the number of shares or extent of interest to be attributed to each such contributory, and distinguish the several classes of contributories. And such list may from time to time, by leave of the judge, be varied or added to, by the official liquidator.

30. Upon the list of contributories being left at the chambers of the judge, the official liquidator shall obtain an appointment for the judge to settle the same, and shall give notice in writing of such appointment to every person

included in such list, and stating in what character, and for what number of shares, or interest such person is included in the list; and, in case any variation, or addition to such list shall at any time be made by the official liquidator, a similar notice in writing shall be given to every person to whom such variation or addition applies. All such notices shall be served four clear days before the day appointed to settle such list, or such variation or addition.

31. The result of the settlement of the list of contributories shall be stated in a certificate by the chief clerk; and certificates may be made from time to time for the purpose of stating the result of such settlement down to any particular time, or as to any particular person, or stating any variation of the list.

Sales of Property.

32. Any real or personal property belonging to the company may be sold with the approbation of the judge, in the same manner as in the case of a sale under a decree or order of the Court in a suit, or, if the judge shall so direct, by the official liquidator; and, upon any such sale by the official liquidator, the conditions or contracts of sale shall be settled and approved of by the judge, unless he shall otherwise direct; and the judge may, if he thinks fit, direct such conditions and contracts, and the abstract of the title to the property, to be submitted to one of the conveyancing counsel of the Court, under the 2nd of the consolidated general orders, and may, on any sale by public auction, fix a reserved bidding; and, unless on account of the small amount of the purchase moneys or other cause, it shall, having regard to the amount of the security given by the official liquidator, be thought proper that the purchase money shall be paid to him, all conditions and contracts of sale shall provide that the purchase moneys shall be paid by the respective purchasers into the Bank of England, to the account of the official liquidator of the company.

Calls.

33. Every application to the judge to make any call on the contributories or any of them, for any purpose authorized by the said Act, shall be made by summons, stating the proposed amount of such call; and such summons shall be served, four clear days at the least before the day appointed for making the call, on every contributory proposed to be included in such call; or, if the judge shall so direct, notice of such intended call may be given by advertisement.

34. When any order for a call has been made, a copy thereof shall be forthwith served upon each of the contributories included in such call, together with a notice from the official liquidator specifying the amount or balance due from such contributory (having regard to the provisions of the said Act) in respect of such call; but such order need not be advertised unless, for any special reason, the judge shall so direct.

35. At the time of making an order for a call, the further proceedings relating thereto shall be adjourned to a time subsequent to the day appointed for the payment thereof, and afterwards from time to time so long as may be necessary; and at the time appointed by any such adjournment, or upon a summons to enforce payment of the call, duly served, and upon proof of the service of the order and notice of the amount due, and non-payment, an order may be made for such of the contributories who have made default, or of such of them against whom it shall be thought proper to make such order, to pay the sum which by such former order and notice they were respectively required to pay, or any less sum which may appear to be due from them respectively.

Payment in of Moneys and Deposit of Securities.

36. If any official liquidator shall not pay all the moneys received by him into the Bank of England, to the account of the official liquidator of the company, within seven days next after the receipt thereof, unless the judge shall have otherwise directed, such official liquidator shall be charged in his account with ten shillings for every £100, and a proportionate sum for any larger

amount, retained in his hands beyond such period, for every seven days during which the same shall have been so retained, and the judge may, for any such retention, disallow the salary or remuneration of such official liquidator.

37. All bills, notes, and other securities payable to the company or to the official liquidator thereof shall, as soon as they shall come to the hands of such official liquidator, be deposited by him in the Bank of England for the purpose of being presented by the bank for acceptance and payment, or for payment only, as the case may be.

38. All orders for payment of calls, balances, or other moneys due from any contributory or other person, shall direct the same to be paid into the Bank of England, to the account of the official liquidator of the company, unless, on account of the smallness of the amount or other cause, it shall, having regard to the amount of the security given by the official liquidator, be thought proper to direct payment thereof to the official liquidator. Provided that where any such order has been made directing payment of a specific sum into the Bank of England, in case it shall be thought proper for the purpose of enabling the official liquidator to issue execution or take other proceedings to enforce the payment thereof, or for any other reason, an order may, either before service of such former order, or after the time thereby fixed for payment, be made, without notice, for payment of the same sum to the official liquidator.

39. At the time of the service of any order for payment into the Bank of England, the official liquidator shall give to the party served a notice, to the purport or effect set forth in Form No. 40 in the third schedule hereto, for the purpose of informing him how the payment is to be made; and before the time fixed for such payment, the official liquidator shall furnish the cashier of the Bank of England with a certificate, to the purport or effect set forth in Form No. 41 in the third schedule hereto, to be signed by such cashier, and delivered to the party paying in the money therein mentioned.

40. For the purpose of entering any order for payment of money into the Bank of England, an affidavit of the official liquidator, to the purport or effect set forth in Form No. 43 in the third schedule hereto shall be sufficient evidence of the non-payment thereof.

41. All moneys, bills, notes, and other securities paid and delivered into the Bank of England, shall be placed to the credit of the account of the official liquidator of the company; and orders for any such payment and delivery shall direct the same accordingly.

Delivery out of Securities, and Payment out and Investment of Moneys.

42. All bills, notes, and other securities delivered into the Bank of England, shall be delivered out upon a request signed by the official liquidator, and countersigned by the chief clerk of the judge; and moneys placed to the account of the official liquidator shall be paid out upon cheques or orders, signed by the official liquidator, and countersigned by the chief clerk of the judge.

43. All or any part of the money for the time being standing to the credit of the account of the official liquidator at the Bank of England, and not immediately required for the purposes of winding-up, may be invested in the purchase of Bank £3 per Cent. Annuities, Reduced £3 per Cent. Annuities, New £3 per Cent. Annuities, or New £2 10s. per Cent. Annuities, in the name of the official liquidator, or in the purchase of exchequer bills. All such investments shall be made by the Bank of England, upon a request signed by the official liquidator, and countersigned by the chief clerk of the judge, and which request shall be a sufficient authority for debiting the account with the purchase money; and such exchequer bills, and in case of an exchange thereof any new exchequer bills, shall be retained by or deposited with the Bank of England, in the name and on behalf of the official liquidator; and such annuities or exchequer bills shall not afterwards be sold or transferred or otherwise dealt with except upon a direction for that purpose, signed by the official liquidator, and countersigned by the chief clerk of the judge, or under an order to be made by the judge.

44. All dividends and interest to accrue due upon any such annuities, shall from time to time be received by the bank of England, under a power of attorney to be executed by the official liquidator, and placed to the credit of the account of such official liquidator; and such of the exchequer bills as shall from time to time be in course of payment, shall be delivered by the Bank of England to one of their cashiers, who is to receive the interest due thereon, and exchange the same for new bills, in case such new bills are issued, or otherwise to receive the principal and interest due on such of the said bills so in course of payment, as cannot be exchanged, and pay the said interest, or principal and interest, as the case may be, into the Bank of England to the credit of the account of the official liquidator of the company.

Meetings of Creditors or Contributories.

45. When the judge shall direct a meeting of the creditors or contributories of the company to be summoned under the 91st or 149th section of the said Act, the official liquidator shall give notice in writing seven clear days before the day appointed for such meeting, to every creditor or contributory, of the time and place appointed for such meeting, and of the matter upon which the judge desires to ascertain the wishes of the creditors or contributories; or, if the judge shall so direct, such notice may be given by advertisement, in which case the object of the meeting need not be stated, and it shall not be necessary to insert such advertisement in the *London Gazette*.

46. The votes of the creditors or contributories of the company at any meeting summoned by the direction of the judge may be given either personally or by proxy; but no creditor shall appoint a proxy who is not a creditor of the company whose debt or claim has been allowed, and no contributory shall appoint a proxy who is not a contributory of the company.

47. The direction of the judge for any meeting of creditors or contributories under the 91st or 149th section of the said Act, and the appointment of a person to act as chairman of any such meeting, shall be testified by a memorandum signed by the chief clerk of the judge.

Direction or Sanction of the Judge.

48. The sanction of the judge to the drawing, accepting, making, and endorsing of any bill of exchange or promissory note by any official liquidator shall be testified by a memorandum on such bill of exchange or promissory note, signed by the chief clerk of the judge.

49. Every application for the sanction of the judge to a compromise with any contributory or other person indebted to the company, shall be supported by the affidavit of the official liquidator that he has investigated the affairs of such contributory or person, and stating his belief that the proposed compromise will be beneficial to the company, and his reasons for such belief; and the sanction of the judge thereto shall be testified by a memorandum, signed by the chief clerk of the judge on the agreement of compromise, unless any party shall desire to appeal from the decision of the judge, in which case an order shall be drawn up for that purpose.

50. The direction or sanction of the judge for any other proceeding or act to be taken or done by the official liquidator, shall be obtained upon summons, and an order shall be drawn up thereon, unless the judge shall otherwise direct.

Applications to the Court or Judge under ss. 137, 138, 141, 167, and 168 of the Act.

51. Every application under the 137th, 138th, or 141st section of the said Act shall be made by petition or motion, or, if the judge shall so direct, by summons at chambers; and every application under the 167th or 168th section of the said Act shall be made by petition.

Orders.

52. All orders made in chambers shall be drawn up in chambers, unless specially directed to be drawn up by the registrar, and shall be entered in the same manner, and in the same office, as other orders made in chambers.

Advertisements.

53. When an advertisement is required for any purpose, except where otherwise directed by these rules, the advertisement shall be inserted once in the *London Gazette*, and in such other newspaper or newspapers, and for such number of times as may be directed. The judge may, in such cases as he shall think fit, dispense with any advertisement required by these rules.

Admission of Documents.

54. Any party to any proceeding in Court or chambers relating to the winding-up of a company may, by notice in writing in the Form No. 6, in Schedule N. to the Consolidated General Orders (*a*), or to the like effect, call on any other party thereto competent to admit the same, to admit any document saving all just exceptions; and in case of refusal or neglect so to admit, the costs of proving such documents shall be paid by the party so refusing or neglecting, unless the judge shall be of opinion that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice shall have been given, except in cases where the omission to give such notice has been, in the opinion of the taxing-master, a saving of expense.

Affidavits.

55. Where an order shall have been made for the winding-up of any company, any person intending to use any affidavit in any proceeding under such order, shall file the same in the Record and Writ Clerks' Office (*b*), and give notice thereof to the official liquidator. The person, other than the official liquidator, filing the affidavit shall not be required to take an office copy thereof, but an office copy thereof shall be taken by the official liquidator, and he shall produce the same at the hearing of any application or proceeding upon which it is intended to be used, unless the judge shall otherwise direct.

Certificate of Chief Clerk.

56. The 48th, 49th, 50th, 51st, 52nd, and 55th rules of the 35th of the Consolidated General Orders, shall apply to all certificates of the chief clerk in the matter of the winding-up of any company; nevertheless, certificates on passing the official liquidator's accounts may be approved and signed by the judge without delay, and upon being so signed, shall be filed and forthwith acted upon.

Note.—Rule 48 of the 35th Consolidated Order is now represented by rule 67 of Order 55 of the Rules of the Supreme Court; and rules 52 and 55 of the 35th Consolidated Order are now represented by rule 70 of Order 55. The other rules here mentioned are not revived by the present orders.

Register and File of Proceedings.

57. A register shall be kept of all proceedings in the judge's chambers, in each matter, in the same manner as required by the 57th rule of the 35th of the Consolidated General Orders, and no documents or proceedings are to be filed in the judge's chambers, unless the judge shall otherwise direct.

Note.—The 57th rule of the 35th Consolidated Order is now represented by Order 55, rule 73.

58. All orders, exhibits, admissions, memorandums, and office copies of affidavits, examinations, depositions, and certificates, and all other documents relating to the winding-up of any company, shall be filed by the official liquidator, as far as may be, in one continuous file, and such file shall be kept by him or otherwise, as the judge may from time to time direct. Every contributory of the company, and every creditor thereof whose debt or claim has been allowed, shall be entitled, at all reasonable times, to inspect such file free of charge, and, at his own expense, to take copies or extracts from any of the

(a) See now R. S. C., App. B. Form 11.

(b) Now the central office of the Supreme Court of Judicature.

documents comprised therein, or to be furnished with such copies or extracts at a rate not exceeding three half-pence per folio of seventy-two words; and such file shall be produced in Court, or before the judge, and otherwise, as occasion may require.

Provisional Official Liquidators.

59. All the above rules relating to official liquidators shall, so far as the same are applicable, and subject to the directions of the judge in each case, apply to provisional official liquidators.

Attendance and Appearance of Parties.

60. Every person, for the time being, on the list of contributories of the company, left at the chambers of the judge by the official liquidator, and every person having a debt or claim against the company, allowed by the judge, shall be at liberty, at his own expense, to attend the proceedings before the judge, and shall be entitled, upon payment of the costs occasioned thereby, to have notice of all such proceedings as he shall by written request desire to have notice of; but if the judge shall be of opinion that the attendance of any such person upon any proceeding has occasioned any additional costs which ought not to be borne by the funds of the company, he may direct such costs, or a gross sum in lieu thereof, to be paid by such person; and such person shall not be entitled to attend any further proceedings until he has paid the same.

61. The judge may from time to time appoint any one or more of the contributories, or creditors, as he thinks fit, to represent before him, at the expense of the company, all or any class of the contributories or creditors, upon any question as to a compromise with any of the contributories or creditors, or in and about any other proceedings before him, relating to the winding-up of the company, and may remove the person or persons so appointed. In case more than one person shall be so appointed, they shall unite in employing the same solicitor to represent them.

62. No contributory or creditor shall be entitled to attend any proceedings at the chambers of the judge, unless and until he has entered in a book to be kept there for that purpose his name and address, and the name and address of his solicitor (if any), and upon any change of his address or of his solicitor, his new address, and the name and address of his new solicitor.

Services of Summonses, Notices, &c.

63. Services upon contributories and creditors shall be effected (except when personal service is required) by sending the notice, or a copy of the summons or order or other proceeding, through the post in a pre-paid letter, addressed to the solicitor of the party to be served (if any) or otherwise to the party himself at the address entered or last entered pursuant to the preceding rule; or if no such entry has been made, then, if a contributory, to his last known address or place of abode; and if a creditor, to the address given by him, pursuant to the foregoing rule 20; and such notice, or copy summons, order, or other proceeding shall be considered as served at the time the same ought to be delivered in the due course of delivery by the post-office, and notwithstanding the same may be returned by the post-office.

64. No service under these rules shall be deemed invalid by reason that the Christian name, or any of the Christian names of the person on whom service is sought to be made has been omitted, or designated by initial letters, in the list of contributories, or in the summons, order, notice, or other document wherein the name of such contributory or creditor is contained, provided the judge is satisfied that such service is in other respects sufficient.

Termination of Winding-up.

65. Upon the termination of the proceedings in chambers for the winding-up of any company, a balance-sheet shall be brought in by the official liquidator of his receipts and payments, and verified by his affidavit; and the official liquidator shall pass his final account, and the balance (if any) due thereon shall be certified. And upon payment of such balance, in such

manner as the Court or judge shall direct, the recognizance entered into by the official liquidator and his sureties may be vacated.

66. When the official liquidator has passed his final account, and the balance (if any) certified to be due thereon has been paid in such manner as the judge shall direct, a certificate shall be made by the chief clerk, that the affairs of the company have been completely wound up; and in case the company has not been already dissolved, the official liquidator shall, immediately after such certificate has become binding, apply to the judge for an order that the company be dissolved from the date of such order.

67. When the proceedings for winding-up any company have been completed, the file of proceedings, and the book containing the official liquidator's account, shall be deposited in the record and writ clerks' office (a).

Duties of Solicitor of Official Liquidator.

68. The solicitor of the official liquidator shall conduct all such proceedings as are ordinarily conducted by solicitors of the Court; and where the attendance of his solicitor is required on any proceeding in Court or chambers, the official liquidator need not attend in person, except in cases where his presence is necessary in addition to that of his solicitor, or the judge shall direct him to attend.

Forms.

69. The forms set forth or referred to in the third schedule to these orders, with such variations as the circumstances of each case may require, may be used for the respective purposes mentioned in such schedule.

Fees.

70. Solicitors shall be entitled to charge, and be allowed the fees set forth and referred to in the first schedule hereto, unless the Court or judge shall otherwise specially direct.

71. The fees of Court set forth and referred to in the second schedule hereto, shall be paid in relation to proceedings in the Court of Chancery under the Companies Act, 1862, and shall be collected by means of stamps, in the manner prescribed by the 39th of the Consolidated General Orders.

Taxation of Costs.

72. Where an order is made in Court or chambers for payment of any costs, the order shall direct the taxation thereof by the taxing-master; except in cases where a gross sum in lieu of taxed costs is fixed by the order, in accordance with the 37th rule of the 40th of the Consolidated General Orders.

Note.—The rule here mentioned is now represented by Order 65, rule 23.

Power of Judge.

73. The power of the Court, and of the judge sitting in chambers, to enlarge or abridge the time for doing any act, or taking any proceeding, to adjourn, or review any proceeding and to give any direction as to the course of proceeding, is unaffected by these rules.

General Directions.

74. The general practice of the Court, including the course of proceeding and practice at the judges' chambers, as provided by the statute 15th and 16th Victoria, chapter 80, and the general orders of the Court relative thereto, shall, in cases not provided for by the Companies Act, 1862, or these rules, and so far as the same are applicable, and not inconsistent with the said Act, or these rules, apply to all proceedings for winding-up a company.

Application of Rules.

75. These rules apply only to proceedings under the Companies Act, 1862.

(a) Now the central office of the Supreme Court of Judicature.

Commencement of Rules.

76. These rules shall take effect and come into operation on and after the 25th day of November, 1862.

Interpretation.

77. The 1st rule of the 23rd of the Consolidated General Orders, and the general interpretation clause therein, shall be deemed to extend and apply to the rules of this order; and such rules shall have the effect of, and be deemed to be general orders of the Court.

THE FIRST SCHEDULE.

FEES AND CHARGES TO BE ALLOWED TO SOLICITORS (a).

THE SECOND SCHEDULE.

FEES TO BE COLLECTED BY MEANS OF STAMPS.

(But see new Order as to Supreme Court Fees, 1884, by which these stamps are altered.)

THE THIRD SCHEDULE.

The forms in this Schedule which are still of use will be found with the other forms in another part of this work.

GENERAL ORDER AND RULES.

SATURDAY, THE 21ST DAY OF MARCH, 1868.

Petitions for Winding-up.

1. Every petition which shall, after this order comes into operation, be presented for the winding-up of any company by the Court, or subject to the supervision of the Court, and all notices, affidavits, and other proceedings under such petition, shall be intituled in the matter of "The Companies Acts, 1862 and 1867," and of the company to which such petition shall relate.

Title of winding-up petition.

Petition to Reduce Capital.

2. Every petition for an order confirming a special resolution for reducing the capital of a company, and all notices, affidavits, and other proceedings under such petition, shall be intituled in the matter of the Companies Act, 1867, and of the company in question.

3. No such petition as mentioned in the 2nd rule of this order shall be placed in the list of petitions by the secretary of the Lord Chancellor or of the Master of the Rolls, as the case may be, until after the expiration of eight clear days from the filing of such certificate as is mentioned in the 14th rule of this order.

4. When any such petition as last aforesaid has been presented, application may be made, *ex parte* by summons in chambers, to the judge to whose Court the petition is attached, for directions as to the proceedings to be

(a) See now R. S. C. 1883, O. 65, rr. 8, 9; and O. 65, r. 27, No. 37. All the taxing-masters hold that the scale

of fees is now governed by the last-mentioned rules, so that the above will not apply.

taken for settling the list of creditors entitled to object to the proposed reduction, and the judge may thereupon fix the date with reference to which the list of such creditors is to be made out, pursuant to the 13th section of the Companies Act, 1867; and may, either at the same time or afterwards, as he shall think fit, give such directions as are mentioned in the 5th and 6th rules of this order. The order upon such summons may be in the Form No. 1 in the schedule hereto, with such variations as the circumstances of the case may require.

5. Notice of the presentation of the petition shall be published at such times, and in such newspapers as the judge shall direct, so that the first insertion of such notice be made not less than one calendar month before the day of the date fixed, as mentioned in the 4th rule of this order. Such notice may be in the Form No. 2 in the schedule hereto, with such variations as the circumstances of the case may require.

6. The company shall, within such time as the judge shall direct, file in the office of the clerks of records and writs, an affidavit made by some officer or officers of the company competent to make the same, verifying a list containing the names and addresses of the creditors of the company at the date fixed as mentioned in the 4th rule of this order, and the amounts due to them respectively, and leave the said list and an office copy of such affidavit, at the chambers of the judge.

7. The person making such affidavit shall state therein his belief that such list is correct, and that there was not at the date so fixed as aforesaid any debt or claim which, if that date were the commencement of the winding-up of the company, would be admissible in proof against the company, except the debts set forth in such list, and shall state his means of knowledge of the matters deposed to in such affidavit. Such affidavit may be in the Form No. 3 in the schedule hereto, with such variations as the circumstances of the case may require.

8. Copies of such list containing the names and addresses of the creditors, and the total amount due to them, but omitting the amounts due to them respectively, or (as the judge shall think fit) complete copies of such list, shall be kept at the registered office of the company and at the offices of their solicitors and London agents (if any), and any person desirous of inspecting the same may at any time during the ordinary hours of business, inspect and take extracts from the same on payment of the sum of one shilling.

9. The company shall, within seven days after the filing of such affidavit, or such further time as the judge may allow, send to each creditor whose name is entered in the said list, a notice stating the amount of the proposed reduction of capital, and the amount of the debt for which such creditor is entered in the said list, and the time (such time to be fixed by the judge) within which, if he claims to be a creditor for a larger amount, he must send in his name and address, and the particulars of his debt or claim, and the name and address of his solicitor (if any) to the solicitor of the company; and such notice shall be sent through the post in a prepaid letter addressed to each creditor at his last known address or place of abode, and may be in the form or to the effect of the Form No. 4, set forth in the schedule hereto, with such variations as the circumstances of the case may require.

10. Notice of the list of creditors shall, after the filing of the affidavit mentioned in the 6th of these rules, be published at such times, and in such newspapers, as the judge shall direct. Every such notice shall state the amount of the proposed reduction of capital, and the places where the aforesaid list of creditors may be inspected, and the time within which creditors of the company who are not entered on the said list, and are desirous of being entered therein, must send in their names and addresses, and the particulars of their debts or claims, and the names and addresses of their solicitors (if any) to the solicitor of the company; and such notice may be in the Form No. 5, set forth in the said schedule hereto, with such variations as the circumstances of the case may require.

11. The company shall, within such time as the judge shall direct, file in the office of the clerks of records and writs an affidavit made by the person to whom the particulars of debts or claims are by such notices as are

mentioned in the 9th and 10th rules of this order, required to be sent in, stating the result of such notices respectively, and verifying a list containing the names and addresses of the persons (if any), who shall have sent in the particulars of their debts or claims in pursuance of such notices respectively, and the amounts of such debts or claims, and some competent officer or officers of the company shall join in such affidavit, and shall in such list distinguish which (if any) of such debts and claims are wholly or as to any and what part thereof, admitted by the company, and which (if any) of such debts and claims are wholly, or as to any and what part thereof, disputed by the company. Such affidavit may be in the Form No. 6 in the schedule hereto, with such variations as the circumstances of the case may require; and such list and an office copy of such affidavit shall, within such time as the judge shall direct, be left at the chambers of the judge.

12. If any debt or claim, the particulars of which are so sent in, shall not be admitted by the company at its full amount, then, and in every such case, unless the company are willing to set apart and appropriate in such manner as the judge shall direct, the full amount of such debt or claim, the company shall, if the judge think fit so to direct, send to the creditor a notice that he is required to come in and prove such debt or claim, or such part thereof as is not admitted by the company by a day to be therein named, being not less than four clear days after such notice, and being the time appointed by the judge for adjudicating upon such debts and claims, and such notice shall be sent in the manner mentioned in the 9th rule of this order, and may be in the Form No. 7 in the schedule hereto, with such variations as the circumstances of the case may require.

13. Such creditors as come in to prove their debts or claims in pursuance of any such notice as is mentioned in the 12th of these rules, shall be allowed their costs of proof against the company, and be answerable for costs, in the same manner as in the case of persons coming in to prove debts under a decree in a cause.

14. The result of the settlement of the list of creditors shall be stated in a certificate by the chief clerk, and such certificate shall state what debts or claims (if any) have been disallowed, and shall distinguish the debts or claims the full amount of which the company are willing to set apart and appropriate, and the debts or claims (if any) the amount of which has been fixed by inquiry and adjudication in manner provided by sect. 14 of the said Act, and the debts or claims (if any) the full amount of which is not admitted by the company, nor such as the company are willing to set apart and appropriate, and the amount of which has not been fixed by inquiry and adjudication as aforesaid; and shall show which of the creditors have consented in writing to the proposed reduction, and the total amount of the debts due to them, and the total amount of the debts or claims, the payment of which has been secured in manner provided by the said 14th section, and the persons to or by whom the same are due or claimed; but it shall not be necessary to show in such certificate the several amounts of the debts or claims of any persons who have consented in writing to the proposed reduction or the payment of whose debts or claims has been secured as aforesaid.

15. After the expiration of eight clear days from the filing of such last-mentioned certificate, the petition may be placed in the list of petitions upon a note from the chief clerk to the secretary of the Lord Chancellor or of the Master of the Rolls, as the case may be, stating that the certificate has been filed and become binding.

16. Before the hearing of the petition, notices stating the day on which the same is appointed to be heard shall be published at such times and in such newspapers as the judge shall direct. Such notices may be in the Form No. 8, in the schedule hereto, with such variations as the circumstances of the case may require.

17. Any creditor settled on the said list whose debt or claim has not, before the hearing of the petition, been discharged or determined, or been secured in manner provided by the 14th section of the said Act, and who has not before the hearing signed a consent to the proposed reduction of capital, may, if he think fit, upon giving two clear days' notice to the solicitor of the

company of his intention so to do, appear at the hearing of the petition and oppose the application.

18. Where a creditor who appears at the hearing under the last-preceding rule is a creditor, the full amount of whose debt or claim is not admitted by the company, and the validity of such debt or claim has not been inquired into and adjudicated upon under sect. 14 of the said Act, the costs of and occasioned by his appearance shall be dealt with as to the Court shall seem just, but in all other cases a creditor appearing under the last-preceding rule shall be entitled to the costs of such appearance, unless the Court shall be of opinion that in the circumstances of the particular case his costs ought not to be allowed.

19. When the petition comes on to be heard, the Court may, if it shall so think fit, give such directions as may seem proper with reference to the securing in manner mentioned in sect. 14 of the said Act, the payment of the debts or claims of any creditors who do not consent to the proposed reduction; and the further hearing of the petition may, if the Court shall think fit, be adjourned for the purpose of allowing any steps to be taken with reference to the securing, in manner aforesaid, the payment of such debts or claims.

20. Where the Court makes an order confirming a reduction, such order shall give directions, in what manner and in what newspapers, and at what times, notice of the registration of the order, and of such minute as mentioned in the 15th section of the Companies Act, 1867, as to be published; and shall fix the date until which the words "and reduced" are to be deemed part of the name of the company, as mentioned in the 10th section of the same Act.

Fees.

21. Solicitors shall be entitled to charge and be allowed for duties performed under the Companies Act, 1867, the same fees as they shall for the time being be entitled to charge, and be allowed, for the like duties performed under the Companies Act, 1862, unless the Court or Judge shall otherwise specially direct.

22. The same fees of Court shall be paid in relation to proceedings in Chancery under the Companies Act, 1867, as shall for the time being be payable in relation to like proceedings in Chancery under the Companies Act, 1862, and shall be collected by stamps in manner provided by the general orders of the Court.

General Directions.

23. The general orders and practice of the Court, including the course of proceeding and practice in the judges' chambers, shall, in cases not provided for by the Companies Act, 1867, or these Rules, so far as such orders and practice are applicable, and not inconsistent with the said Act or with these Rules, apply to all proceedings in the Court of Chancery under the said Act.

24. The power of the Court and of the judge sitting in chambers to enlarge or abridge the time for doing any act or taking any proceeding, to adjourn or review any proceeding, and to give any direction as to the course of proceeding, shall be the same in proceedings under the Companies Act, 1867, as in proceedings under the ordinary jurisdiction of the Court.

Commencement of Order.

25. This order shall take effect and come into operation on the 15th day of April, 1868, and shall apply to all proceedings in Chancery under the said Act, whether commenced before or after that day, but every proceeding taken under the said Act before that day shall have the same validity as it would have had if this order had not been made.

Interpretation.

26. The general interpretation clause of the Consolidated General Orders shall be deemed to extend and apply to the rules of this order, and this order shall be deemed a general order of this Court.

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I cannot deal with compromises without proper evidence.

If the liquidator makes a compromise he can only do so under the rules which the law and the practice of the Court prescribes and can only deal with it under the rules which the same law and practice provides. The liquidator must investigate all matters affecting a proposed compromise and come to a decision upon it as a practical business man and then if he thinks it should be accepted he must disclose to the Court what he has done and the reasons why he has arrived at his conclusions that the compromise would be advantageous to the creditors or why it should be approved and sanctioned by the Court. Then the Court has to make its investigation of the facts set out in the affidavit and may require further information. The liquidator's recommendation of the compromise is not binding, for the Court must fully consider the whole matter and form an independent opinion apart from that of the liquidator.

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When a list of contributories is brought in by the liquidator taken by him from the books of the Company, three things have to be determined—(1) Are the persons on such list contributories; (2) if so as for how many shares and (3) what is the amount due by each of them in respect of such shares. Then the liquidator has to ascertain how the assets will turn out and the amount they will realize and thereby⁸⁰ in reduction of the amount the contributories are found to owe on account of their shares. When this is done he applies for an order that a call of so much be made on the contributories and how it is to be made payable. The amount of the call on contributories is not determined until the liquidator has a fair view of the field and ascertains whether the full amount of the liability of the contributories will be called in or not. *Ex parte Hadkinson*
Macdonald v. Ordinary, Re Catholic Register, May 15, 1900

... (f) ... (g) ... (h) ... (i) ... (j) ... (k) ... (l) ... (m) ... (n) ... (o) ... (p) ... (q) ... (r) ... (s) ... (t) ... (u) ... (v) ... (w) ... (x) ... (y) ... (z) ...

... (f) ... (g) ... (h) ... (i) ... (j) ... (k) ... (l) ... (m) ... (n) ... (o) ... (p) ... (q) ... (r) ... (s) ... (t) ... (u) ... (v) ... (w) ... (x) ... (y) ... (z) ...

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1. The first thing I noticed
when I stepped out of the
plane was the heat. It
was a relief after the
cold of the plane. The
temperature was in the
lows. I had heard that
the weather was bad, but
it was perfect. The
humidity was just what I
needed. The humidity was
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SAMPLES ON

The market has been a large one, larger than any few individual traders whose operations are not easily distinguished in the generally heavy trade.

Corn—Has ruled strong and higher to-day. The opening was steady, about $\frac{1}{8}$ c over yesterday's close. Country acceptances were rather large, and elevator people were the sellers. The steady buying by commission houses, with the strength in wheat and liberal cash demand, caused a sharp upturn of a cent a bush, and closed at about the best price of the day. Receipts, 478 cars, against 485 cars estimated.

Oats—Have ruled strong and active with wheat and corn, prices up a cent a bush, and closed at about the best price of the day. The strength was mainly in September, which was $\frac{1}{4}$ c over July at

June 21 e Meredith, C.J. 1900

Ontario Bank v. Rouchier.—Judgment in action tried at Ottawa upon the one question reserved at the trial. The defendants' testator at the time of his death was indebted to plaintiff in the amount of an unmatured promissory note, and there was to his credit in the Ottawa branch the sum of \$124. The assets of deceased are insufficient to pay his debts. This action is to recover the amount of the note now matured. Held, that plaintiffs are entitled to deduct from the amount of the promissory note the amount at the credit of the deceased and to rank on the estate for and receive a dividend on the balance. Judgment for plaintiffs for amount, to be calculated accordingly to be recovered de bonis propriis. No costs. Wyld (Ottawa) and Glyn Osler (Ottawa) for plaintiffs. Belcourt (Ottawa) and J. A. Ritchie (Ottawa) for defendants.

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Chamber Before Boyd, C. *File 17*
Re North Toronto Floral Co. *Inda*
ment (R.) on motion for a winding-up
order under the Winding-up Act. Held,
inter alia, that there was no evidence
of the insolvency of the company—
nothing actually done by it as an ac-
knowledgment in the nature of a cor-
porate act. The affidavit even of the
president of a company stating its in-
solvency is not sufficient under R.S.C.,
ch. 129, sec. 5 (d); Re Winnipeg, 7 Man.,
260; the company having no assets, an
order will not be made; Re Chapel, 24,
Ch. D., 259; Re — (1892) 3 Ch., 177.
Motion dismissed with costs. J. H.
Spence for petitioner. Rowan for com-
pany.

Rube Waddell, the famous southpaw of the Pirates, made his first appearance on the stage at Brookville, Pa., December 5 with Hindman and Kummer's "Uncle Sam's" Company. His debut was a great success, the great pitcher proving himself an actor of truly rare ability. In his emotional moments he had much of a Manfred air, his pathos was that of a Godwin and his comedy possesses the spontaneity of Stuart Robson. He led the band in the street parade, clad in showy gaudiness and handled a baton with the grace of a rhyming woman juggling a hot potato. His star act is a tableau, in which he poses in the uniform of the Pittsburgh club with a ball held high and green light thrown on his pitching wing. Between the acts Rube sold twenty-five-cent song books, reduced to ten cents, through the

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